

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION-RIVERSIDE

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HONORABLE VIRGINIA A. PHILLIPS, JUDGE PRESIDING

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REPORTER'S TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Riverside, California

Thursday, August 14, 2014

8:44 p.m.

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THURSDAY, AUGUST 14, 2014; RIVERSIDE, CALIFORNIA

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(Outside the presence of the jury:)

THE CLERK: EDCR 12-092(B) VAP, United States of America v. Sohiel Omar Kabir and Ralph Kenneth DeLeon. Counsel.

MS. DEWITT: Good morning, Your Honor. Susan DeWitt on behalf of the Government.

THE COURT: Good morning.

MR. GRIGG: Good morning, Your Honor. Chris Grigg
for the United States.

MR. CHIU: Good morning, Your Honor. Allen Chiu on behalf of the United States.

THE COURT: Thank you. Good morning.

MR. AARON: Good morning, Your Honor. Jeffrey Aaron for the federal defender for Mr. Sohiel Kabir who is present in custody.

THE COURT: Thank you. Good morning.

MR. LARSEN: Good morning, Your Honor. Matt Larsen
for Mr. Kabir.

THE COURT: Thank you.

MS. VIRAMONTES: Good morning, Your Honor. Angela
Viramontes for Sohiel Kabir.

THE COURT: Thank you.

MR. THOMAS: Good morning, Your Honor. Dave Thomas

1 on behalf of Ralph DeLeon who is here and present with me at
2 counsel table.

3 THE COURT: Thank you. Good morning.

4 We're on the record outside the presence of the jury,
5 and we have a few matters to take up this morning. I
6 understand counsel had some matters to take up? 08:44

7 MS. DEWITT: Your Honor, just as a housekeeping
8 matter, there's a couple of exhibits that the Government is
9 going to introduce this morning and this afternoon that are --
10 they are the items that were recovered from luggage. And if 08:45
11 you look at the Government's exhibit list, they are
12 individually accounted for but, for example, in Exhibit 9 there
13 are 24 items of clothing. And it's my intention to have the
14 agent sort of generally describe what is in this group of
15 documents or items, rather, and not hold up every single pair 08:45
16 of boxer shorts and socks, et cetera. But I think it is
17 important for him to be able to describe generally what's in
18 the box.

19 For purposes of the record, if it's acceptable to the
20 Court, just so that we can establish what is in fact in the 08:45
21 box, my proposal would be that I just read the items for the
22 record. Or we can, if the Court wants me to do it in an even
23 more abbreviated fashion, I think that that would clearly
24 identify each item without him having to pull out -- assuming,
25 of course, the underlying box of luggage is moved into 08:46

1 evidence.

2 But I just wanted to figure out a way that's
3 acceptable to the Court and counsel to make this expeditious,
4 but at the same time have a complete record of all the items
5 that are in each of these essential containers.

08:46

6 THE COURT: All right. Let me ask counsel, I think
7 the best way to do it -- the most accurate and the most
8 efficient way to do it would be if it's moved into evidence,
9 rather than showing each item, to have a list of the items
10 read. And then there's a stipulation that if you're willing to
11 stipulate, if you've examined the box, that those are the items
12 that are in that box.

08:46

13 Have you had a chance to look and see what's in the
14 -- is it a box or a suitcase?

15 MR. AARON: We have looked at some of the items. I'm
16 not sure that we've looked at all of the items of physical
17 evidence, but we've looked at some of the items that were of
18 interest.

08:47

19 I don't understand -- the Government could certainly
20 ask the witness, *Did you see items -- Did you take items of*
21 *clothing?*

08:47

22 Yes.

23 *Did you look at Exhibit No. 24? Are those the items*
24 *that you found?*

25 Yes.

08:47

1 They could clearly do that. Any other accommodation
2 outside the rules of evidence I'm not sure that there is, one,
3 a need for it, and, two, I'm not sure that we have the legal
4 authority for it.

5 But there's ways that they could shorten the 08:47
6 proceeding if they want. I mean, they don't even have to
7 introduce any of that evidence. They could just have the
8 officer testify, ...*found articles of clothing.*

9 I'm not sure what the relevance is of their boxer
10 shorts or of things like that. 08:48

11 MS. DEWITT: Your Honor, obviously it's relevant to
12 the Government to show that these individuals when they got in
13 the car that day weren't just going down to the park. They had
14 a full set of clothes and other items, personal items, with
15 them. They are relevant to the Government, and I think they
16 are important, but I don't know that there is a big dispute
17 over whether or not there is five pairs of socks and five pairs
18 of boxer shorts versus -- 08:48

19 THE COURT: All right. But I think, if I'm
20 understanding both sides -- well, all three sides' positions
21 correctly, the defense lawyers are not in a position right now
22 to stipulate to what was in the box because you haven't looked
23 at it. 08:48

24 MR. THOMAS: That's correct, Your Honor. We've seen
25 pictures of it. We've looked it in the records room, but we 08:48

1 haven't sorted through everything.

2 MS. DEWITT: They've had an opportunity to --

3 THE COURT: Well, all right. I'm not saying they
4 didn't have an opportunity, but right now they're not in the
5 position because they can't say that if you read a list of the
6 items that that's in fact the items. 08:48

7 So if you do that, either right now or before the end
8 of the day, you could at least stipulate that those are the
9 items, that this is a correct accounting of the items in the
10 box or the suitcase as of right now. 08:49

11 MS. DEWITT: Excuse me, Your Honor.

12 THE COURT: So she doesn't have to read the list in.

13 MS. DEWITT: What I can also do, Your Honor, is I can
14 actually -- I've had the agent double-check it against our
15 exhibit list. And I can ask him if he's, in fact, confirmed
16 each of these items, and go through them one by one. 08:49

17 THE COURT: Well, I'm trying to avoid that.

18 MS. DEWITT: I mean -- I don't necessarily mean
19 pulling them out, but just actually list them and ask him if
20 it's in there. 08:49

21 THE COURT: I don't think we even need to do that.

22 MR. AARON: Right. We could -- he could just
23 identify the items, identify the box, and then counsel and I --
24 he could show us later. And I'm certain that we would
25 stipulate that what he says is in the box is in the box, if it 08:49

1 in fact is in the box --

2 MR. THOMAS: That's correct.

3 MR. AARON: -- without going through the box.

4 THE COURT: Got it.

5 MR. AARON: -- or testifying about the box. 08:49

6 THE COURT: I think we don't have to go outside the
7 box.

8 MR. AARON: Right.

9 THE COURT: Okay. So you might not be able to move
10 it into evidence until the end of the day, until they've had a 08:50
11 chance to do that. But I think that would be quicker than
12 going through each item.

13 MS. DEWITT: Okay. That's fine, Your Honor. And
14 when there's individual items that I need to -- that I actually
15 want to publish, then I will -- 08:50

16 THE COURT: You can do that.

17 MS. DEWITT: -- ask on an individual basis.

18 Thank you.

19 THE COURT: All right. Does the defense have any
20 evidence to bring up today? 08:50

21 Mr. Larsen?

22 MR. LARSEN: Yes, Your Honor, the matter of the
23 proposed limiting instruction.

24 THE COURT: Yes.

25 MR. LARSEN: We received Your Honor's language in the 08:50

1 proposed instruction, and I listened to the Government's
2 suggestions yesterday.

3 As to the first sentence, *You are about to hear*
4 *evidence that -- we have no objection to it reading "persons"*
5 *rather than "the defendants" -- that persons listened to,* 08:50
6 *viewed, commented on, or disseminated materials from radical*
7 *Islamic internet sites.*

8 We would propose changing "radical Islamic" to
9 "various," one, because "radical Islamic" is not defined, and
10 secondly, because we don't know that of the various sites the 08:51
11 defendants may have viewed all of them would fit under whatever
12 definition "radical Islamic" means.

13 After that sentence, we would propose inserting the
14 following language --

15 THE COURT: Okay. Can you just hold on a minute so I 08:51
16 have it in front of me.

17 So eliminate the word "radical." All right. I'm
18 sorry. I'm with you now. Go ahead.

19 MR. LARSEN: Certainly.

20 It would read, *...disseminated materials available* 08:52
21 *from various Internet sites.*

22 THE COURT: You don't want it to say "Islamic?"

23 MR. LARSEN: We don't know that that's the case at
24 this point. I think there are over 100 exhibits that the
25 Government said they intend to introduce about the various 08:52

1 sites linked to or posted from, and we haven't had an
2 opportunity to verify that each and every one of them is
3 Islamic. And I'm also not sure --

4 THE COURT: Well, no, I'm sure that they're not each
5 and every one of them. Well, I don't know exact -- but at 08:52
6 least some of them are. So I would probably be giving this
7 instruction before something is being displayed or shown to the
8 jury about something that comes from an Islamic site. But I'll
9 -- for the purpose of our discussion right now, I'll mark what
10 you're requesting. 08:53

11 MR. LARSEN: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. LARSEN: And after "Internet sites," we would
14 propose inserting the following language, and I'll read it
15 slowly. 08:53

16 THE COURT: All right.

17 MR. LARSEN: *Such activity is not a crime, nor is the*
18 *fact that the sites contain material that some people may find*
19 *offensive.*

20 *We would propose this as necessary to draw the line* 08:53
21 *between expression, thoughts, and views on the one hand, and*
22 *criminal actions on the other hand.*

23 And I think the Court, in its en banc decision in
24 *Curtin*, which we previously cited in our 404(b) motion, speaks
25 to the dangers of this. 08:54

1 The majority recognize the fact that in that case a
2 limiting instruction was given. In that case, the defendant
3 was charged with crossing state lines to engage in sexual
4 activity with minors. And on his person, he was found to have
5 a PDA containing a number of stories with various prurient and
6 obscene matter. And the Government wanted to introduce those
7 stories as evidence relevant to his intent to commit the
8 crimes, much like the evidence of the websites here.

08:54

9 The court there gave a limiting instruction, which
10 was explicitly endorsed by Judge Wardlaw in her concurrence,
11 and not quite reached by the majority, because the majority
12 found error on another ground. But the limiting instruction
13 there talks about the danger -- the limiting instruction there
14 reflects the need, which we submit is the need in this case, to
15 draw the line between thoughts on one hand and criminal actions
16 on the other.

08:54

08:55

17 That's the reason for proposing the language that we
18 just quoted.

19 Continuing with the instruction, *I instruct you that*
20 *this evidence is admitted only for the limited purpose of*
21 *showing whether or not Mr. Kabir or Mr. DeLeon, or both, had*
22 *intent to commit the charged crimes.*

08:55

23 We have no objection.

24 *Therefore, you must consider it only for that limited*
25 *purpose and not for any other purpose.*

08:55

1 Yesterday, the Government mentioned the possibility
2 of getting into the idea of the First Amendment. We believe
3 it's unnecessary to instruct the jury on the First Amendment
4 because the defense is not raising a First Amendment defense.
5 We think it's unnecessary to go down that road, and we think it
6 would potentially confuse the jury. 08:55

7 We think the language that we have proposed addresses
8 the dangers inherent in offering evidence of viewpoints as
9 evidence relevant to criminal conduct. I think, you know, as
10 the *Curtain* court recognized, one has to, you know, tread
11 carefully in this area, and that's why we proposed the language
12 we have. 08:56

13 THE COURT: All right. Mr. Grigg?

14 MR. GRIGG: Thank you, Your Honor.

15 As an initial matter, the Government doesn't object
16 to replacing "radical Islamic Internet sites" with the word
17 "various," only because to the extent that one exhibit may be
18 viewing something from, in fact, a radical Islamic website and
19 the next may not, I don't want to mischaracterize everything
20 that follows the Court's limiting instruction as "radical
21 Islamic sites." 08:57

22 So we have no problem with that language.

23 The Government doesn't necessarily have an objection
24 to the insertion of the sentence, *Such activity is not a crime,*
25 *nor is the fact that sites containing material that some people* 08:57

1 *may find offensive.*

2 I would suggest, as a gloss on that suggestion, that
3 *Such activity is not itself a crime.*

4 And with the inclusion of that sentence, I think that
5 actually obviates the need, possibly, for a First Amendment-
6 type instruction for purposes of the jury being presented with
7 this material. 08:57

8 So if Mr. Larsen and the defense are requesting that
9 no such instruction about beliefs or religion be given at this
10 point, I don't think that will be an issue. 08:58

11 However, as to the suggestion or the endorsement of
12 the language that was already drafted, again, the Government
13 reiterates the point made yesterday that the purpose for which
14 this evidence may be considered is too narrow. There are other
15 purposes. And I -- 08:58

16 THE COURT: And the other purposes, again, were?

17 MR. GRIGG: Well, I think as the Court mentioned, it
18 was considering offering language -- including language such
19 that, *It may be considered for the purpose -- the limited*
20 *purpose of determining whether an agreement existed and* 08:58
21 *determining whether or not the defendants communicated with*
22 *each other, as the Government's suggestion, as well as whether*
23 *or not the defendants had an intent to commit the charged*
24 *crime.*

25 And I can attempt to synthesize all that and recite 08:59

1 it as I think it would read, if the Court accepted Mr. Larsen's
2 proposal and the Government's.

3 THE COURT: Well, the problem I have -- well, I
4 appreciate the parties' attempts to agree on as much as you
5 can.

08:59

6 The language, *Such activity itself is not a crime*,
7 that's fine, but it's not grammatically consistent to say,
8 ...nor is the fact that the sites contain material that some
9 people may find offensive.

10 So *Such activity is not a crime* -- I don't -- at the
11 moment, I would just leave it at that. It might be simpler.

08:59

12 Or if you want to just revise the second part of that
13 sentence so that its construction is consistent with the first
14 part, then that would be all right.

15 As far as the purposes for which it's admitted, I
16 agree that that should include determining whether it's the way
17 I proposed yesterday, determining whether an agreement existed
18 or -- I can't remember what the Government's phrasing was.
19 Either of those is all right. And determining whether the
20 defendants communicated with each other, I think is the other
21 purpose, and I think that's -- that's agreeable, as well.
22 That's appropriate, as well.

09:00

09:01

23 So if you want to just tweak that one sentence that
24 you're proposing.

25 MR. LARSEN: It could read instead, ...nor is

09:01

1 visiting sites that contain these materials.

2 THE COURT: That's fine. All right. So we'll type
3 it up and give it to both sides.

4 Do you want to be heard on some other point?

5 MR. LARSEN: Yes, Your Honor.

09:01

6 THE COURT: Go ahead.

7 MR. LARSEN: Just as to the latter sentence
8 expanding --

9 THE COURT: I'm sorry. Can you check and see whether
10 all the members of the jury are here?

09:02

11 THE CLERK: Yes.

12 THE COURT: Okay. Go ahead.

13 MR. LARSEN: Certainly.

14 As to expanding the purposes to include whether an
15 agreement existed, I think we have trouble with this because
16 the defense's position is that posting something on Facebook,
17 which is a public forum that potentially anyone in the world
18 can access, is not evidence of criminal conspiracy, at least
19 without evidence that the person on whose wall material is
20 being posted was accessed by another one of the defendants in
21 this case.

09:02

22 I think there has to be some kind of a proffer that
23 when Defendant A posts something Defendant B actually reads it,
24 before we can tell the jury that they can consider the evidence
25 of an agreement between Defendants A and B.

09:02

1 THE COURT: Well, I think that's a matter -- I don't
2 necessarily disagree with that, but I think it's admissible for
3 that purpose. I mean, I think -- and then I think it's a
4 matter for argument to the jury as to the weight to be given to
5 it for this limited -- for that part of the limited purpose for
6 which it's being admitted. 09:03

7 MR. LARSEN: I would agree with Your Honor that it's
8 admissible potentially, but I think the foundation has to be
9 laid.

10 If it's going to be offered to show a potential 09:03
11 agreement between the defendants, there has to be some kind of
12 proffer that Defendant A read what Defendant B posted. It
13 can't be enough that one defendant posts something on his
14 *Facebook* wall; there has to be some kind of proffer that the
15 other defendant knew about it. 09:03

16 THE COURT: All right. Mr. Grigg.

17 MR. GRIGG: Your Honor, the Government anticipates
18 that there will be numerous examples of postings on *Facebook*
19 pages on which the other defendant and co-conspirators
20 commented, "like" "shared" and did joint activity. 09:03

21 THE COURT: So you're not -- what your proffer is, in
22 other words, is that you're not simply going to introduce into
23 evidence for this purpose a comment on a *Facebook* wall to which
24 there is no response?

25 MR. GRIGG: For that purpose, Your Honor, not 09:04

1 necessarily.

2 The presentation will be, in essence, the activity on
3 one's *Facebook* page reflects on one's -- in other words, this
4 defendant or this co-conspirator posted, liked, disseminated,
5 shared, these materials. To the extent that --

09:04

6 THE COURT: So in other words, if you introduce
7 evidence that Defendant A posted something, you're introducing
8 that for the limited purpose as to Defendant A's intent,
9 correct?

10 MR. GRIGG: That's correct, Your Honor.

09:04

11 THE COURT: Unless Defendant B posts something in
12 response.

13 MR. GRIGG: And in that situation, Your Honor, the
14 Government would argue, *Well, this demonstrates additional*
15 *direct communication between the participants.*

09:04

16 THE COURT: All right.

17 MR. GRIGG: Now, as a matter of inference that the
18 jury is certainly entitled to draw, because there's extensive
19 activity of Mr. DeLeon, for example, communicating with
20 Mr. Kabir through Mr. Kabir's public *Facebook* page, they
21 certainly are permitted to draw an inference that simply on a
22 certain post that Mr. Kabir makes that Mr. DeLeon doesn't like
23 or share, they are permitted to draw the inference that
24 Mr. DeLeon may have in fact read that post. But it's only an
25 inference.

09:05

1 The Government would not say merely because Mr. Kabir
2 posted it, DeLeon necessarily saw it.

3 THE COURT: Or agreed with it.

4 MR. GRIGG: Or agreed with it, right.

5 THE COURT: So as long as the Government is not 09:05
6 making that argument --

7 MR. GRIGG: Right. There's a reasonable inference to
8 draw that they regularly visited each other's *Facebook* pages.
9 And although one particular posting doesn't itself demonstrate
10 that DeLeon may have looked at Kabir's items, the jury can draw 09:05
11 that inference if it wishes.

12 And the Government can argue that they were regularly
13 on each other's *Facebook* pages and probably had a sense of all
14 of the postings because the activity tracks over time. There's
15 communication throughout. 09:06

16 Now, the Government's not going to offer a particular
17 exhibit of a posting by Mr. Kabir that does not directly
18 indicate or that we don't have some other evidence to show that
19 Mr. DeLeon saw that particular posting. Simply without
20 additional evidence, the Government would not say, *Mr. Kabir* 09:06
21 *posted this; therefore, Mr. DeLeon liked, shared, adopted*
22 *whatever view was expressed in it.*

23 It's rather, *Mr. Kabir posted this. This reflects*
24 *his interests, his intent.*

25 There are other communications where Kabir posts 09:06

1 something; DeLeon directly communicates. We can argue that
2 that shows an interconnectedness, a concert of action,
3 expressed communications between the co-conspirators.

4 And then there are other items where they are
5 directly communicating with each other saying, *Hey, go to my* 09:06
6 *Facebook page. Go to this. Go to that site and obtain this*
7 *material.*

8 THE COURT: All right.

9 MR. LARSEN: One final point on this, Your Honor.

10 I think, as our discussions of this even briefly has 09:06
11 reflected, there may not be an easy one-size-fits-all approach
12 to this.

13 What the court did in *Curtin*, what the district court
14 did there was, he said his limiting instruction -- there were
15 five stories, essentially, only five stories offered to show 09:07
16 intent, and there were parts of each story offered. And he
17 said to the jury, *Therefore, each time the prosecution intends*
18 *to offer one of these items, I have required them to state the*
19 *purpose, for example: the intent, or his knowledge, or his*
20 *method.* 09:07

21 Now, it may be cumbersome, but I think it may be
22 necessary in this case, as Judge Wardlaw said in her
23 concurrence, *The district court's limiting instructions were*
24 *extensive and necessary here to cabin the jury's consideration*
25 *of the relevant aspects of the admitted stories.* 09:07

1 I think because we're dealing with a large volume of
2 posts, some of which may concern one defendant, some of which
3 may concern the other, some of which may concern both, some of
4 which may be highly inflammatory, some of which may be less so,
5 some of which may be offered to show motive, some of which may
6 be offered to show an agreement, I think a one-size-fits-all
7 approach may not be sufficient in this case. 09:07

8 So I would recommend, then, it may indeed perhaps be
9 necessary to address each of these items as they are introduced
10 to the jury, and making very clear to the jury what purpose 09:08
11 they are being offered for, which defendant they are being
12 offered against, and letting the jury then draw any reasonable
13 inferences.

14 MR. GRIGG: Your Honor, *Curtain* is distinguishable on
15 this very point for which counsel urges the Court to have this 09:08
16 specific item-by-item statement. And that is because in
17 *Curtin*, the defendant himself was charged with a crime. He
18 wasn't charged with conspiring with others or working with
19 anyone else. The defendant himself had these specific items
20 solely in his possession. This wasn't a situation where he had 09:08
21 posted things to a public website that other co-conspirators
22 had visited and viewed.

23 In this situation, as counsel already pointed out,
24 posting something publicly is a communication to anybody who
25 happens to have access to that website. And as the evidence 09:08

1 will plainly show, and I don't think there is any real dispute,
2 these defendants and the co-conspirators were on each other's
3 *Facebook* regularly and often.

4 So to use counsel's phrase "to cabin," I think is to
5 construct an artificial law here. Because in *Curtin*, there was
6 nobody else the defendant was communicating with. He had these
7 materials in his possession.

8 Here, the evidence is also relevant and admissible to
9 show their public disseminated postings and to show their
10 communication with each other. And it's not feasible to simply
11 say, *Well, it was posted on a public website; therefore, it is*
12 *like the prurient material in Curtin, which was in private*
13 *possession and not published or disseminated to anyone.*

14 THE COURT: Well, the other distinction, I believe,
15 between this case and what's done in *Curtin* is the material in
16 *Curtin*, for which the limiting instruction was given, was
17 404(b) evidence, correct?

18 MR. GRIGG: That's correct, Your Honor.

19 MR. LARSEN: I'm sorry, Your Honor. The last point
20 on *Curtin*.

21 If the level of the extensive and necessary nature of
22 the instructions in *Curtin* were warranted there, they are even
23 more so here. I agree with Mr. Grigg. In *Curtin*, it was one
24 person. He wasn't charged with conspiracy, and the items were
25 found on his person. And think of the lengths to which the

09:09

09:09

09:10

09:10

1 district court went in that case to make sure that Mr. Curtin
2 was not convicted for his views.

3 Here, that need is even greater because of the nature
4 of this evidence. Because a posting on an internationally
5 accessible website is not criminal, does not necessarily
6 reflect criminal intent, and given the context, or given the
7 particular piece of evidence offered may reflect upon only one
8 defendant, the jury may be confused into thinking it reflects
9 on both.

10 I think given the fact that *Curtin* involves only one
11 person, and the district court went to great length there to
12 guard against an unlawful conviction, I think the need is even
13 greater here because the potential for confusion is even
14 greater here.

15 MR. GRIGG: Your Honor -- I apologize, Your Honor.

16 THE COURT: Go ahead. I think I understand the
17 issue.

18 MR. GRIGG: To the extent that the argument for these
19 additional walls to be put up is that the material is -- on the
20 Internet sites is like the pornography and the prurient
21 material that *Curtin* had, and to say that though it's not
22 criminal to view these things, the Court's already going to
23 address that in the instruction and the language that the
24 parties already agree on. There's no reason to use that to
25 further erect the wall around these things.

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09:11

1 But also the argument that there needs to be a
2 careful distinction between which defendant something is being
3 used for, in that way these exhibits are no different than the
4 boxer shorts in the luggage. Just because Mr. DeLeon packs
5 boxer shorts doesn't mean that Mr. Kabir had something to do
6 with that. And the jury can make that inference or not and
7 assess that evidence on its own. The Court is merely
8 instructing the jury that it may consider these things for the
9 limited purpose of X. It doesn't say, *You must only consider*
10 *it.* It doesn't say, *Every exhibit that comes after I give this*
11 *instruction goes to one of these things.*

12 The Court is allowing the jury to make the same
13 assessment it would of any physical item that will be
14 introduced or any other piece of evidence.

15 MR. LARSEN: There's an obvious difference, Your
16 Honor, between boxer shorts and anti-American propaganda. I
17 think Your Honor knows that already.

18 THE COURT: I think you've argued this sufficiently.

19 All right. We're waiting on one juror, and I don't
20 know if that person has arrived.

21 I have a number of other items I wanted to discuss
22 with counsel, but I guess that will have to wait.

23 The juror questionnaires -- the questionnaires for
24 all of those who have been seated as jurors or alternates will
25 be in the Court's file, but all of those who were excused

09:11

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09:13

1 yesterday counsel should return your copies to us to be
2 destroyed.

3 They already did? Okay. Great.

4 THE CLERK: Mr. Aaron already did.

5 THE COURT: So the Government needs to do that. 09:14

6 Ms. Viramontes, in your opening statement yesterday,
7 I believe you mentioned Rosa Maldonado as a witness.

8 MS. VIRAMONTES: That's correct, Your Honor.

9 THE COURT: I don't think she's on your witness list.

10 MS. VIRAMONTES: Your Honor, may I have a moment to 09:14
11 confer with Mr. Aaron?

12 THE COURT: Certainly.

13 MS. VIRAMONTES: Thank you, Your Honor.

14 I believe we advised the Government of her. Would
15 you like us to file an amended witness list? 09:14

16 THE COURT: No, we can add her.

17 You are aware of Ms. Maldonado?

18 MS. DEWITT: I certainly know who she is, yes. And I
19 was -- we don't object to them calling her. 09:14

20 THE COURT: That's fine. You don't need to file an
21 amended witness list. 09:14

22 MS. VIRAMONTES: Thank you.

23 THE COURT: That's fine. I just wanted to make sure.

24 As to the issue regarding Mr. DeLeon's opening
25 statement and whether that implicated the Court's previous 09:15

1 ruling on the proffer, having reviewed the rough version of the
2 opening statement yesterday I don't think it does, except --
3 well, essentially, I don't think it does. And perhaps we
4 should not argue this to any great extent until all counsel
5 have had a chance to review the transcript. I saw that there 09:15
6 was an order for the transcript on the docket last night. So I
7 don't know if the Government's -- I don't know if either side
8 is really prepared to argue it until you've got a copy of the
9 transcript.

10 MR. GRIGG: Your Honor --

11 THE COURT: But essentially, the argument -- there
12 was argument, but the opening statement said that the
13 confidential source initiated the conversation, and repeated
14 several times that the confidential source initiated several of
15 the activities that the Government has alleged in the 09:16
16 Indictment, and talked about yesterday in its opening statement
17 as overt acts, such as the paintball activities, the weapons,
18 the firearms, going to the firing range, and so on, initiated
19 particular activities. And I don't think that that's
20 inconsistent with the statements that his client made in the 09:17
21 proffer.

22 So Mr. Grigg.

23 MR. GRIGG: Your Honor, I would like an opportunity
24 to review the transcript, but two initial points -- and both
25 are actually fairly initial because they came early in 09:17

1 defendant DeLeon's opening.

2 First, the statement I believe was the CHS initiated
3 everything. And I don't have the benefit of the transcript,
4 but to the extent that that is a statement that the CHS
5 initiated the plot, that is directly inconsistent with
6 Mr. DeLeon's admission to the FBI that he first told the CHS
7 about the plot. 09:17

8 THE COURT: Well, the statement at the very beginning
9 of Mr. Thomas' opening was, *This was talk that was initiated,*
10 *encouraged and recorded.* I think that's -- 09:18

11 MR. GRIGG: I had that note, as well, Your Honor. I
12 think there's another sentence that I had in mind. And again,
13 without the benefit of the transcript, I don't want to misspeak
14 or put words in --

15 THE COURT: Okay. Well, probably we should wait
16 until everyone has a copy of the transcript. 09:18

17 MR. GRIGG: I do want to bring one specific point up,
18 though. I mean, nobody disputes that there was a lot of
19 reference to talk. That was, I think, the opening salvo in
20 counsel's statement. 09:18

21 As the Government pointed out in its opposition to
22 Mr. Kabir's motion to exclude Mr. DeLeon's proffer statement,
23 at page 8, DeLeon admitted that he wanted to take initiative
24 and not, quote, "just talk," and that it was his intent to go.

25 So that's a direct contradiction, almost verbatim 09:18

1 direct contradiction. And that is part and parcel --

2 THE COURT: Where is that in the proffer?

3 MR. GRIGG: I've cited to, I believe it's page 3 --

4 sorry. Page 4, Your Honor. I have the document here.

5 THE COURT: It's in the last paragraph of page 4. 09:20

6 MR. GRIGG: Yes, Your Honor, after the discussion of
7 wanting to go join.

8 THE COURT: I don't necessarily agree with you that
9 that's a direct contradiction. But I think we better defer
10 this until everyone has a transcript to review. 09:20

11 As soon as the last juror arrives we can begin.

12 (In the presence of the jury:)

13 THE CLERK: EDCR 12-092(B) VAP, United States of
14 America v. Sohiel Omar Kabir and Ralph Kenneth DeLeon.

15 Counsel, please state your appearance. 09:34

16 MS. DEWITT: Good morning, Your Honor, and good
17 morning, ladies and gentlemen. Susan DeWitt on behalf of the
18 United States of America.

19 MR. GRIGG: Morning. Good morning, Your Honor.
20 Chris Grigg for the United States. 09:34

21 MR. CHIU: Good morning, Your Honor. Allen Chiu on
22 behalf of the United States.

23 THE COURT: Thank you. Good morning.

24 MR. AARON: Good morning, Your Honor. Good morning.
25 Jeffrey Aaron for Mr. Sohiel Kabir. 09:34

1 MR. LARSEN: Good morning, Your Honor. Good morning,
2 ladies and gentlemen. Matt Larsen for Mr. Kabir.

3 MS. VIRAMONTES: Good morning. Good morning. Angela
4 Viramontes on behalf of Sohiel Kabir.

5 THE COURT: Thank you. Good morning. 09:34

6 MR. THOMAS: Good morning, Your Honor. Dave Thomas
7 on behalf of Ralph DeLeon who is here and present with me at
8 the counsel table.

9 Good morning, ladies and gentlemen.

10 THE COURT: Thank you. Good morning. Let the record 09:34
11 reflect the presence of all members of the jury.

12 All right. You may call your first witness.

13 MS. DEWITT: The Government would call Scott Hill.

14 THE COURT: Please come forward.

15 THE CLERK: Sir, if you could stop there and raise 09:35
16 your right hand.

17 **GOVERNMENT'S WITNESS, SCOTT HILL, WAS SWORN**

18 THE CLERK: Thank you. You may be seated.

19 Please state your full name and spell it for the
20 record. 09:35

21 THE WITNESS: Scott P. Hill. Last name is H-I-L-L.

22 THE COURT: Thank you. You may inquire.

23 **DIRECT EXAMINATION**

24 BY MS. DEWITT:

25 Q. Mr. Hill, who do you work for? 09:35

1 A. Federal Bureau of Investigation.

2 Q. How long have you worked for the Federal Bureau of
3 Investigation?

4 A. Over 12 years.

5 Q. What is your current position at the Federal Bureau of 09:35
6 Investigation?

7 A. I am a divisions principal tactical instructor, full-time
8 firearms instructor, and I'm also a team leader on the SWAT
9 team.

10 Q. Let me just back up a second. 09:35

11 Do you actually have a title at the FBI?

12 A. Yes. I'm a special agent.

13 Q. And you mentioned that your responsibility is a principal 09:36
14 tactical instructor?

15 A. Yes.

16 Q. What does that involve?

17 A. I'm the person for all the agents in the division. I 09:36
18 train and advise them in tactics, techniques, for conducting
19 entries, vehicle stops, anything that the agents are going to
20 do during their course of work or line of their duties.

21 Q. And you're an instructor in those areas?

22 A. Yes.

23 Q. You also mentioned that you're a SWAT team leader?

24 A. Correct.

25 Q. What is a -- how long have you been involved in SWAT 09:36

1 teams?

2 A. Over ten years.

3 Q. Can you explain to the jury, generally, what a SWAT team
4 is and what the responsibilities are of a SWAT team leader?

5 A. Sure. The SWAT team is comprised of individuals -- they 09:36
6 are all agents in our division -- that are trained to a certain
7 degree that they are to handle any instances where there is a
8 higher than normal threat to the agents in the division, or the
9 need to use some of our special tactics, techniques, procedures
10 that would be more conducive to something that the agents are 09:37
11 involved in. So they would call us and ask us to take care of
12 whatever needed to get taken care of.

13 Q. And directing your attention to the date of November 16th,
14 2012, were you involved in a tactical operation on that day?

15 A. Yes, I was. 09:37

16 Q. And what were your responsibilities that day?

17 A. I was the team leader for that team. My job that day was
18 to plan and execute the detaining of individuals in Chino.
19 Specifically, I was conducting a vehicle stop, was our plan.

20 Q. So your two primary responsibilities were a vehicle stop 09:37
21 and detaining the occupants in that vehicle?

22 A. Correct.

23 Q. What was the location or the primary location that was the
24 focus of the tactical operation?

25 A. In about the area of 12350 Marshal Avenue. The specific 09:37

1 unit we were looking at was 124. And the vehicle we were
2 looking at was a vehicle that the individuals had driven up in,
3 which was a Honda Civic.

4 Q. So it would be fair to describe that as the parking area
5 for the apartment complex? 09:38

6 A. Correct, yes.

7 Q. Did your team in fact execute a vehicle stop on that day?

8 A. Yes, we did.

9 Q. And approximately what time did that occur?

10 A. That was approximately 9:15 a.m. 09:38

11 Q. What kind of vehicle was the subject of the vehicle stop?

12 A. It was a four-door Honda Civic.

13 Q. Did your team also detain the occupants of that vehicle?

14 A. Yes, we did.

15 Q. Did your team also secure the vehicle after you did the
16 vehicle stop? 09:38

17 A. Yes, we did.

18 Q. During this tactical operation, did the FBI utilize air
19 and ground support?

20 A. Yes, we did. 09:38

21 Q. Can you explain to the jury what you mean by "ground
22 support," "ground surveillance"?

23 A. When we say "ground surveillance," those are individuals
24 that are specially trained to observe and document
25 surveillance. Usually when we say "ground," they're in 09:38

1 vehicles or on foot.

2 Q. And can you explain for the jury what you mean by "aerial
3 support" or "aviation support"?

4 A. Again, same thing. It would be agents that would again
5 train in surveillance, but they're in aircraft. So either 09:38
6 helicopters or a fixed-wing aircraft. And they usually have,
7 as well as radios, they also have -- called a FLIR, where they
8 have telephoto lenses that will be downlinked to us.

9 Q. You mentioned downlinked to you. Can you explain what you 09:39
10 mean by that?

11 A. Sure. When the aircraft are involved, you're going to see
12 a video screen that they're looking at. They can actually
13 transmit that video screen so remotely we can look at the exact
14 same thing that the aircraft is looking at.

15 Q. On the day of November 16th, were you yourself actually 09:39
16 able to see this video, this feed from the --

17 A. Yes, I was able to see the live video feed. We have a
18 handheld display, kind of smaller than that screen right there,
19 and it sits right in front of me, and I can view that.

20 Q. Special Agent Hill, I have a tendency sometimes to talk 09:39
21 over you, and you have a tendency to start before I'm ready.
22 So you need to slow down just a little bit --

23 A. Sure.

24 Q. -- so the court reporter doesn't get mad at me for having 09:39
25 us talking over each other.

1 A. Okay.

2 Q. So you are able to watch the feed from your aerial units
3 that day?

4 A. Yes.

5 Q. And was that feed also recorded? 09:40

6 A. Yes.

7 Q. And prior to testifying today, did you have an opportunity
8 to view a clip of that aerial surveillance that was recorded?

9 A. Yes, I was.

10 MS. DEWITT: At this time, Your Honor, I would ask to 09:40
11 have what's been previously marked for identification as
12 Government's Exhibit 465 and 465A placed in front of the
13 witness.

14 THE COURT: Go ahead.

15 BY MS. DEWITT: 09:40

16 Q. Special Agent Hill, directing you first to 465.

17 What is that exhibit?

18 A. 465A?

19 Q. 465.

20 A. 465 is a CD. It has "Exhibit 465" on it. It's containing 09:40
21 aerial surveillance of the takedown on November 16th, 2012.

22 Q. And is that the particular clip of surveillance that you
23 had an opportunity to watch?

24 A. Yes, it is.

25 Q. How do you know that that's it? 09:41

1 A. Because my initials are on here on the bottom right
2 corner, as well as the date that I observed it, which was
3 8/11/2014.

4 Q. What's depicted on that clip of video, does that
5 accurately reflect the events of the day of November 16 when
6 you were involved in the SWAT operation? 09:41

7 A. Yes, it does.

8 MS. DEWITT: At this time, Your Honor, the Government
9 would move to admit Government's Exhibit 465.

10 THE COURT: Any objections? 09:41

11 MR. AARON: None.

12 MR. THOMAS: No, Your Honor.

13 THE COURT: Thank you. It's ordered admitted.
14 You may publish.

15 (Exhibit No. 465 was admitted.) 09:41

16 MS. DEWITT: Thank you, Your Honor.

17 And with the Court's permission, I now ask to have
18 the video played for the jury.

19 THE COURT: Go ahead.

20 BY MS. DEWITT: 09:41

21 Q. Special Agent Hill, can you please, as this is playing,
22 just describe to the jury what they're seeing?

23 A. Sure.

24 MS. DEWITT: Apologize, Your Honor. We actually did
25 test this this morning. 09:42

1 MR. GRIGG: Your Honor, may we ask the agent to
2 retrieve the disk itself from the witness stand?

3 THE COURT: Yes. Go ahead.

4 MS. DEWITT: I apologize, Your Honor. We did test it
5 this morning.

09:43

6 (Video playing.)

7 THE WITNESS: Okay. So what we're looking at right
8 now, that's the target vehicle that we knew identified as our
9 Honda Civic. The first individuals walking out we identified
10 of the Unit 124. We also knew that tree was a good landmark
11 for us where the car was parked into and was also just to the
12 front left of the target residence.

09:43

13 So at this point, our team is staged at a location
14 just -- just to the next parking lot over that's unseen by
15 these individuals. So we're just waiting for all of them to
16 get in the car at this point.

09:43

17 Currently, we're setting our team, getting them
18 together. I'm, at times, watching this feed. Other times, I'm
19 talking to my teammates, making sure we're all in the same
20 place and ready to execute this.

09:44

21 While this is happening, the ground and aerial
22 surveillances are relaying to us via our radio exactly what's
23 transpiring here, as you're seeing in the video clip, how many
24 individuals are coming out, where they're coming out from, and
25 what they're carrying. For instance, this individual in the

09:44

1 white shirt has a black backpack. That's all being
2 communicated to us via radio.

3 One of the things that we want to know is, one, do we
4 have all of our people in the vehicle that we want, which was a
5 concern to us, and when they were leaving. 09:44

6 So at this point, we're notified the vehicle is
7 backing up and starting to depart. And at that time, it was
8 about 9:13, 9:15 a.m., about 9:15 a.m.

9 So as it's exiting, it will make its way around
10 towards the -- one of the entrances, the southern entrance
11 where there's a sliding gate. That black car that's directly
12 behind that is not part of ours. That was just a third person
13 that was driving by. 09:45

14 So as we're coming by, we do not want this individual
15 in the vehicle to get out, so we will have a vehicle, as you'll
16 see coming up here pretty soon, that will come right by it on
17 the left that's going to block this car from exiting. That's
18 our vehicle right there. 09:45

19 In this place, it's going to pull up right in front.
20 It's going to stop. It's going to hit its rear flashers so the
21 individuals can see that it is a police emergency vehicle. Our
22 operators are stepping out and they're moving to places of
23 cover where they're getting, essentially, out of the way. 09:45

24 And then just to the bottom left where you can't
25 really see, just off screen, our team is starting to assemble 09:46

1 and get into a position to where we can safely move these
2 people out of the vehicle.

3 You can also see one of our guys behind a car up
4 there at the top of the screen.

5 So at this point here, we have -- my job is to ensure 09:46
6 that I have none of my people downrange to the right of the
7 vehicle, in which case if there was an incident where gunfire
8 would erupt, then none of my people would be in a dangerous
9 position.

10 So at this point now, we start calling out the driver 09:46
11 first. We will continue to do this throughout this video clip
12 where we are having each person come out one by one. And so
13 we're having them come out. And you're going to have them look
14 down and see -- you'll see we're going to ask him to open up
15 the rear door, as well. And that's what he's doing right now. 09:46
16 So he's going to open up the rear door, and he's going to keep
17 his hands up, and then we're just going to walk him back
18 towards us where we would detain him.

19 Once we detain him -- and it's going to be difficult 09:47
20 to see it sometimes because the aircraft is in orbit. It's
21 going to go around this big tree. It's coming up here on the
22 right. As we're detaining these individuals, they're brought
23 back behind our vehicles, and they're just searched to make
24 sure they don't have any weapons on them, or anything like
25 that. Anything that we find on them is placed right there at 09:47

1 their feet and it stays with them right there. It's not moved,
2 nor are they moved.

3 If they are moved, anything that we took out of their
4 pockets is moved with them and stays right where they are.

5 And that's continually happening as, again, as the
6 aircraft is orbiting around this tree. 09:47

7 BY MS. DEWITT:

8 Q. Special Agent Hill, approximately what time is this?

9 A. This was probably about -- we started at 9:15 a.m., so it
10 was probably about 9:18, 9:19. 09:47

11 Q. And I notice on the video here it indicates a time of
12 1614?

13 A. Correct.

14 Q. Can you explain that?

15 A. Yeah. It looks like the time stamp on the aircraft was
16 set up for Greenwich Mean Time. It's the universal time that
17 you would see in England. It's the 24-hour time. So it's one
18 universal time, and it's a 24-hour time, so that would be
19 4 p.m. in Greenwich, Greenwich Mean Time. Which for the local
20 time there it would say 9:14 a.m. 09:48

21 And as you can see, we're still pulling people out,
22 detaining them one by one.

23 Also while this is going on, I have another team by
24 the residence that you saw all the individuals come out, Unit
25 124. Their job was to establish a perimeter on that residence 09:48

1 to ensure that nobody enters and exits into that residence. So
2 while this is going on off screen, from that residence you saw
3 these individuals exit from, I have some SWAT operators
4 standing by there just securing that, making sure no one goes
5 in or out.

09:49

6 Again, one at a time. Not as fast as you see on TV
7 to fit it in the 30-minute show, but this is how it's done in
8 real life to ensure it's safe, for not only us but for the
9 occupants, that nothing goes wrong.

10 Q. And in this instance, Special Agent Hill, this is an
11 airplane?

09:49

12 A. Correct. So as you can see, as the aircraft is coming
13 around here, this tree, you'll see we are all set up in a line,
14 and as well as we're moving people back from the occupants of
15 the vehicle and detaining them to the sides and the back.

09:50

16 Q. You mentioned that when the occupants were removed from
17 the vehicle your standard operating procedure would be also to
18 check them for items in their pockets, and possibly weapons?

19 A. Absolutely. So that's what's happening in the back. You
20 can actually see to the rear of the vehicle someone is back
21 there. They are pulled back there to double-check for any
22 weapons, anything that's in their pockets is pulled out just to
23 ensure, and it's kept right there by them. As you can see, if
24 you look down, you can actually see some things on the ground
25 right there, and that's just their personal belongings is kept

09:50

1 right there with them.

2 Q. And what would happen with those items?

3 A. They would be kept there with the individual until we turn
4 it over to the investigative team that would relieve us later.

5 Q. So when another investigative officer would come and take 09:51
6 custody of these individuals, they would take those items with
7 them?

8 A. Right. The investigative team would come, at that time
9 we're exchanging cuffs, putting their cuffs on and taking our
10 cuffs off. We would show them all the litter that was taken 09:51
11 out of their pockets, and we would turn it over to them and it
12 would become their responsibility.

13 So at this point here, we've cleared the whole entire
14 car of what we can see of all the occupants. And now they are
15 just going to move in to double-check that the car is, in fact, 09:51
16 clear. And then once it's all clear, yeah.

17 Q. At some point, Special Agent Hill, did you in fact
18 relinquish the occupants of that vehicle to other law
19 enforcement officers?

20 A. Yes. 09:51

21 Q. And at some point, did you also relinquish the vehicle
22 itself to other investigative agents?

23 A. Yes.

24 MS. DEWITT: At this time, Your Honor, I would ask to
25 have what's been previously marked for identification as 09:52

1 Government's 465A placed in front of the witness. I think he
2 actually already has it.

3 THE COURT: He has it.

4 BY MS. DEWITT:

5 Q. Special Agent Hill, can you tell me what those items are? 09:52

6 A. These are still photos of the video clip we just watched.

7 Q. How many still videos -- still shots are there from the
8 video?

9 A. Seven.

10 MS. DEWITT: At this time, Your Honor, the Government 09:52
11 would move to admit the still shots contained in Government's
12 Exhibit 465A.

13 THE COURT: Any objection to 465A?

14 MR. AARON: No, Your Honor.

15 MR. THOMAS: No objection. 09:52

16 THE COURT: Thank you. 465A is ordered admitted.
17 You may publish.

18 (Government's Exhibit No. 465A was admitted.)

19 MS. DEWITT: Thank you.

20 And if you could put up 465A, the first page. 09:52

21 BY MS. DEWITT:

22 Q. And again, Special Agent Hill, these are just
23 representative snapshots from different time periods in the
24 video so that the jury could look at it easier later by not
25 having to see the whole video. 09:53

1 And what's depicted here?

2 A. This is when the individuals came out of Unit 121 --
3 excuse me -- 124, and they're starting to congregate around the
4 target vehicle, which was the Honda Civic, by our identified
5 tree.

09:53

6 Q. And the second page?

7 A. Again, this was, I think one of the first individuals that
8 came out, identified he had a light-colored shirt, a backpack,
9 beginning to enter the target vehicle.

10 Q. And the third page?

09:53

11 A. This was the initiation of our traffic -- or our vehicle
12 stop, traffic stop, where the FBI vehicle pulled in front of it
13 and blocked the target vehicle.

14 Q. And the next page?

15 A. This is when we begin calling out the driver of the
16 vehicle compliance and then bringing him back to us.

09:53

17 Q. And the next page?

18 A. One of the occupants being called back to our team.

19 Q. And the next page?

20 A. Another one of the occupants being called back.

09:54

21 Q. And finally, I believe it's the last page?

22 A. I believe this is the front right passenger being called
23 back as well.

24 Q. And approximately what time was this tactical operation
25 completed?

09:54

1 A. It was about 9:23 that I called it in as Code 4, meaning
2 the situation is clear.

3 Q. And just to be clear, Agent Hill, other than this
4 particular tactical operation that you were involved in, were
5 you otherwise in any way involved in the underlying
6 investigation? 09:55

7 A. No, I was not.

8 MS. DEWITT: Nothing further at this time, Your
9 Honor.

10 THE COURT: Mr. Aaron, cross-examination. 09:55

11 MR. AARON: Thank you, Your Honor.

12 THE COURT: You may inquire.

13 **CROSS-EXAMINATION**

14 BY MR. AARON:

15 Q. Good morning, Mr. Hill. 09:55

16 A. Morning.

17 Q. You were the supervisor of the arrest scene?

18 A. I was the team leader, yes.

19 Q. Who did you report to?

20 A. My team commander. 09:55

21 Q. And who was that?

22 A. Special Agent Mike Comella. That's spelled C-O-M-E-L-L-A.

23 Q. Just to clarify things, you see the gentleman seated to
24 the middle of the two attorneys right there?

25 A. Yes. 09:55

1 Q. That gentleman was not present when you made the arrest,
2 correct?

3 A. I'm unsure.

4 Q. You're unsure?

5 A. I'm unsure, yes.

09:55

6 Q. When you made the arrests, you saw the gentlemen coming
7 out, correct? And they were all men, correct?

8 A. Correct. I saw them each come out one by one, yes.

9 Q. And you saw the agents go through and take their
10 belongings and put it, according to procedure, right by them as
11 they knelt on the ground, correct?

09:56

12 A. Not all of them. I would look back just to make sure it
13 was getting done, but I had a large area to ensure a lot of
14 things were getting done, so yes.

15 Q. The reason they have SWAT there is if there are specific
16 threats, correct?

09:56

17 A. Yes. The reason we would be called is if it's at the time
18 the agents or the management decides that there is a higher
19 threat level. That threat level could be the person, could be
20 weapons. It could be many things that contribute to why they
21 perceived it as a higher-than-normal threat.

09:56

22 Q. In the course of that arrest, if something had occurred
23 which might indicate the presence of a threat, they would tell
24 you as the team leader, right?

25 A. I'm sorry. Say that again.

09:57

1 Q. In the course of that arrest, if there was something which
2 indicated that there may be a threat, they would tell you as
3 the team leader so you could direct the response, correct?

4 A. During the -- when we were calling them back, or when they
5 were searching for stuff in their pockets? 09:57

6 Q. At any time?

7 A. Maybe, maybe not. They would have to handle that
8 situation as an agent right in front of them. They may not
9 have time to call for me.

10 Q. But you would be there watching, right? 09:57

11 A. I would be in the vicinity. I might not be exactly
12 watching what's happening. Because as you can see from that
13 video, we had calling people from the front, which is tactical
14 problem, and to the rear where the agents were being -- the
15 agents are securing the occupants of the vehicle. So there is
16 about a 360-degree of things happening. 09:57

17 Q. But certainly after the event, after the arrest was
18 completed, after your task was completed, if there had been any
19 threat, as a team leader you would have been notified?

20 A. I would have been notified, yes. 09:57

21 Q. And here you were not notified of any guns, correct?

22 A. Correct.

23 Q. Not notified of any knives?

24 A. Not that I'm aware of.

25 Q. Not notified of any weapons? 09:58

1 A. Not that I'm aware of, no.

2 Q. You were not notified of any threat, correct?

3 A. I was not notified of any weapons or anything that was of
4 concern to me, no.

5 Q. You were not notified of any resistance by any of the
6 persons arrested; isn't that true? 09:58

7 A. Correct.

8 Q. And as we saw on the video, it doesn't appear that anyone
9 tried to flee, correct?

10 A. Correct. 09:58

11 Q. So everyone submitted to arrest and was placed in arrest
12 safely?

13 A. Correct.

14 Q. There was air surveillance by an airplane that was
15 circling over the scene, correct? 09:58

16 A. Correct.

17 Q. How many agents were in that airplane?

18 A. That, I don't know.

19 Q. How many agents were on your team?

20 A. That day, I'm unsure of the exact number. I'm not sure of
21 the exact number. 09:59

22 Q. You don't know the exact number of agents you supervised?

23 A. Well, we had a mix. They are not my day-to-day
24 supervision, and so with something like this I'd bring in
25 operatives from other teams. We have five times at one arm, 09:59

1 SWAT teams, so at that time I had individuals from different
2 teams assigned to me. So again, at that day, yes, I knew how
3 many there were that day. Now I don't. I don't remember how
4 many there were.

5 Q. Did you write a report?

09:59

6 A. No.

7 Q. How many agents are usually on your team?

8 A. Nine.

9 Q. And so in Southern Cal -- in the Central District, there
10 is five SWAT teams with --

09:59

11 A. We have one team for our division. In that team, there
12 are five teams. Each team is a team leader, assistant team
13 leader, et cetera. So on my team there are supposed to be nine
14 people.

15 Q. Do you think you had as many as two teams there?

10:00

16 A. Yes.

17 Q. As many as three?

18 A. No.

19 Q. So there would be at least 18 agents on the ground?

20 A. No. There would be -- the full components of the teams
21 were not there. Sometimes people are gone, for instance,
22 leave, or on another duty, or something like that, so we may
23 have another team.

10:00

24 The way our teams are set up, they are numerical. So
25 20s, 30s, 40s, 50s, 60s is the way it's designated. So my team

10:00

1 is 50s. I may have -- that day I had the team it was the 20s
2 assigned to me, attached to my team. But their full component
3 may not be there. So we would say the 20s are with us, but
4 they may not have the full component team. So to say the exact
5 number, I don't know.

10:00

6 Q. And since you didn't write any report, there is no record
7 kept of how many agents were actually there?

8 A. There is a record kept of who was there, yes.

9 Q. But you didn't do it?

10 A. No.

10:01

11 Q. Would it be safe to say there was about 20 agents
12 altogether?

13 A. Probably less than 20, I would think.

14 Q. 15?

15 A. About there. That's a decent number, yes.

10:01

16 Q. Were there any other task force officers or local police?

17 A. Not within our perimeter. There may have been outside the
18 perimeter that were not in control of -- that I had no control
19 over. We usually tend to try and keep control over everything
20 in the center. So those were all my people that you saw.

10:01

21 Q. "Perimeter" is a law enforcement or a military term. Can
22 you explain to the jury what you mean by that?

23 A. Perimeter would just be a line or an area that's
24 established that would separate the tactical area to where
25 everyone else is congregating, most civilian citizens that are

10:01

1 walking around, just to ensure for their safety as well.

2 Q. When we're talking about tactical area, we're talking
3 about the area where things are happening?

4 A. Correct, yes.

5 Q. And that would be primarily the area within the video? 10:02

6 A. Primarily, yes. Also, remember we had the other team that
7 was securing the perimeter, the outside of the Unit 124.

8 Q. And they would be beyond the 15 or 20 agents we've talked
9 about?

10 A. No, that was included in that. 10:02

11 Q. But they would be outside the perimeter, perhaps with
12 other law enforcement?

13 A. No. They were self-contained as well.

14 Q. Before you went in to do the arrest, you knew what car you
15 were going to be stopping, correct? 10:02

16 A. Yes. Yes.

17 Q. You knew what road was going to be taken, correct?

18 A. No.

19 Q. You were --

20 A. We had an idea. It was going to go two ways, either go 10:02
21 north or go south.

22 Q. And you were --

23 THE COURT: Excuse me. I'm sorry. Agent Hill, could
24 you please remember to wait until the question is finished
25 before you start your answer. 10:02

1 THE WITNESS: Yes, ma'am.

2 BY MR. AARON:

3 Q. And you were prepared to stop that vehicle whichever route
4 it chose?

5 A. Yes.

10:03

6 Q. And you were going to stop it by placing at least one
7 other vehicle in front of it and then bring the other police
8 vehicles behind it?

9 A. Correct.

10 Q. So there was no possibility of that vehicle escaping?

10:03

11 A. There is a possibility for everything, but we had enough
12 planning and hoping that, yes, that was not going to happen.

13 Q. Well, as an experienced SWAT team leader and FBI agent
14 with 12 years on the force, you were satisfied that you would
15 be able to prevent that vehicle from getting to the airport?

10:03

16 A. Correct, yes.

17 Q. One of the things that you have to do, when you're doing
18 an arrest, is keep track of the defendants, right?

19 A. Yes.

20 Q. And that's why you don't say, *Okay, gentlemen, get out of*
21 *the car all at once.* You have them get out of the car one at a
22 time?

10:03

23 A. Correct.

24 Q. How many persons did your team arrest altogether?

25 A. Well, I don't know how many -- as far as arrests, we

10:03

1 pulled out five occupants out of the vehicle. They were a
2 driver, a front passenger, and three in the rear.

3 Q. Let me back up for a minute.

4 Did you actually -- did your team actually formally
5 arrest them, or was it someone else? 10:04

6 A. We detained them and then turned them over to the
7 investigative team, and then the process begins from there.

8 Q. But who was that you turned them over to?

9 A. Whichever the investigative team was. There was another
10 team that came that was comprised of a number of agents that it 10:04
11 was turned over to.

12 Q. Different from the 15 to 20 agents that --

13 A. Correct, yes.

14 Q. So there was 15 to 20 agents on the tactical arrest, and
15 then there was an unknown number on the investigation? 10:04

16 A. Yes. And they would come and take custody of the
17 individuals that we detained, as well as any of their pocket,
18 belongings, as well as from the vehicle.

19 Q. Do you remember who those agents were that you turned over
20 the prisoners to? 10:04

21 A. No, I don't.

22 Q. Going back now to the actual arrest. At this point,
23 you've stopped the vehicle --

24 A. Uh-huh.

25 Q. -- and you've ordered the persons out. Who is the first 10:05

1 person to come out?

2 A. The driver.

3 Q. And who is the driver?

4 A. Don't remember.

5 Q. Who is the second person to come out?

10:05

6 A. I believe it was the person sitting behind the driver.

7 Q. The driver's side passenger?

8 A. Correct.

9 Q. And who was that person?

10 A. I do not know.

10:05

11 Q. And who was the next person after that?

12 A. Probably would have been the person sitting to his right
13 in the rear seat.

14 Q. The middle passenger?

15 A. Correct.

10:05

16 Q. And who was?

17 A. Do not know.

18 Q. And who was next?

19 A. It would have been the person who was sitting to the right
20 of that person in the rear passenger side.

10:06

21 Q. And who was that person?

22 A. Do not know.

23 Q. And who was the next?

24 A. Would have been -- the front passenger would have been the
25 last person.

10:06

1 Q. And you don't know who that person was either?

2 A. No, I don't.

3 Q. Now, as a trained crime scene investigator and experienced
4 FBI agent, it makes a difference where people are sitting in
5 the car, correct? 10:06

6 A. Correct.

7 Q. And you didn't keep a record of it, apparently, right?

8 A. No.

9 Q. Who did?

10 A. Well, other than the video, I don't know if we had a 10:06
11 written record of who was where in the car.

12 Q. So you're saying that you stopped the car, and no one kept
13 a record of who was driving or who was sitting next to the
14 driver giving them instruction?

15 A. We may have passed that information to the investigative 10:07
16 team. That I don't know, though. But again, judging from the
17 video clip, that would have been something that we could have
18 referenced.

19 Q. Looking at the video clip now, can you identify which
20 person came from which -- other than the driver, can you 10:07
21 identify which person came from which side?

22 A. Probably at least three, I think. I can do that.

23 Q. And that's just on inspection of the video, that's not
24 relying on your memory?

25 A. Correct. 10:07

1 Q. But you yourself didn't write a report and didn't keep a
2 record of who was sitting where?

3 A. No. We don't usually do that unless there is some reason
4 to, unless if we find some sort of evidence or something and we
5 want to make sure, *Hey, that person was sitting here. There* 10:07
6 *was a weapon or some sort of contraband there.*

7 We wouldn't advise the agents, unless they requested
8 it.

9 Q. And sometimes the agents will request that because they'll
10 want to know who's got leadership in that group or who's got a 10:07
11 certain role. They'll say, *We want to know where people are*
12 *sitting, right?*

13 A. Yes. There are many reasons for them to ask for that.

14 Q. And they didn't do that here?

15 A. Unaware. 10:08

16 Q. The agents -- the investigating agents didn't tell you, *We*
17 *want to know where people are sitting in the vehicle?*

18 A. I'm unaware if they did. They may have spoken to some of
19 the other guys, which is often the case. So sometimes we speak
20 with -- we have certain -- we have one to two operators who are 10:08
21 holding and detaining the people to the rear, and then they ask
22 them, *Hey, what did you find on them? Where were they sitting?*

23 So those discussions may have happened, but I wasn't
24 aware of them.

25 Q. And they wouldn't tell -- your agents wouldn't tell you as 10:08

1 a team leader?

2 A. No. It's not often the case that they tell me everything
3 that goes on. I'm certainly not like their dad.

4 MR. AARON: Okay. Thank you.

5 THE WITNESS: Sure.

10:08

6 THE COURT: Mr. Thomas.

7 MR. THOMAS: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 BY MR. THOMAS:

10 Q. Morning, Agent Hill.

10:08

11 A. Morning.

12 Q. Now, I know from your response to my counsel --
13 co-counsel's questions you didn't know who came out at which
14 time from the car, correct?

15 A. Say that again.

10:09

16 Q. Well, you knew who the -- where the location of the person
17 was sitting, but you didn't know who was who?

18 A. Correct.

19 Q. Do you know who was in the car, as you sit here today?

20 A. No.

10:09

21 MR. THOMAS: I have nothing further.

22 THE COURT: Thank you. Redirect examination?

23 **REDIRECT EXAMINATION**

24 BY MS. DEWITT:

25 Q. Agent Hill, just to be clear, your responsibility that day

10:09

1 was to oversee a vehicle stop; is that correct?

2 A. That's correct.

3 Q. And to detain the individuals in that vehicle?

4 A. Correct.

5 Q. And you knew what the vehicle was before you detained the 10:09
6 vehicle?

7 A. Yes.

8 Q. Or excuse me, stopped the vehicle and detained the people
9 in the vehicle?

10 A. Yes. 10:09

11 Q. It wasn't your responsibility that day to make an
12 assessment about the individuals in the vehicle?

13 A. That is correct.

14 Q. That was the responsibility of other investigative
15 officers? 10:09

16 A. That is correct.

17 Q. And on that day, there were, if I understood your
18 testimony correctly, there were multiple SWAT teams that were
19 deployed that day?

20 A. Correct. 10:10

21 Q. At different locations?

22 A. Correct.

23 Q. Including two response -- two teams that were responsible
24 for both the vehicle and the apartment that day?

25 A. That is correct. 10:10

1 Q. That were under your supervision?

2 A. Correct.

3 Q. And there was a question asked of you with regard to
4 whether or not there was a threat that day. In your opinion,
5 based on your experience, are vehicle stops inherently
6 dangerous?

7 A. Absolutely.

8 Q. Can you explain why?

9 A. Because you don't have a vision of what exactly is inside
10 that vehicle. Vehicles are a very easy place to hide weapons,
11 or anything like that. So until the person is cleared and the
12 weapon is cleared and their vehicle is cleared, it is still
13 considered a threat until we ourselves are sure that there is
14 no threat involved.

15 MS. DEWITT: No further questions, Your Honor.

16 THE COURT: Thank you. You may step down.

17 The Government's next witness?

18 MS. DEWITT: At this time the Government would call
19 David Staab.

20 MR. GRIGG: Your Honor, may we ask that the exhibit
21 that was on the stand for the witness be retrieved?

22 THE COURT: Certainly. You may approach.

23 THE CLERK: Sir, if you could stop there and raise
24 your right hand.

25 **GOVERNMENT'S WITNESS, DAVID STAAB, WAS SWORN**

10:10

10:10

10:10

10:10

10:11

10:11

1 THE CLERK: Thank you. You may be seated.

2 Please state your full name and spell it for the
3 record.

4 THE WITNESS: David Steven Staab. D-A-V-I-D,
5 S-T-E-V-E-N, S-T-A-A-B, as in "boy." 10:12

6 THE COURT: Thank you.

7 You may inquire.

8 **DIRECT EXAMINATION**

9 BY MS. DEWITT:

10 Q. By whom are you employed? 10:12

11 A. I am employed with the FBI.

12 Q. What is your title with the FBI?

13 A. I am a special agent.

14 Q. How long have you been employed by the FBI?

15 A. Approximately eight years. 10:12

16 Q. Are you assigned to a particular squad at the FBI?

17 A. Yes. I'm assigned to the White Collar Squad here in
18 Riverside.

19 Q. Do you have a particular area of response on that squad?

20 A. Yes. I work public corruption matters, and I'm assigned
21 to the Inland Regional Corruption Task Force. 10:12

22 Q. Now, Special Agent Staab, directing your attention to the
23 date of November 16th, 2012, were you involved in the search
24 and seizure of a vehicle that day?

25 A. I was. 10:12

1 Q. Where was that vehicle located?

2 A. It was located in the parking lot area of 12350 Marshall
3 Avenue, Apartment 124, in Chino, California.

4 Q. And what kind of vehicle was it that you searched that
5 day? 10:13

6 A. It was a gold tannish color Honda Civic.

7 Q. Approximately what time did you first arrive at that
8 location, the parking lot at 12350 Marshall?

9 A. I arrived at approximately 9:30 that morning.

10 Q. When you arrived, what was happening? 10:13

11 A. When I arrived, the FBI SWAT team had detained several
12 individuals that were in the vehicle. The individuals were
13 outside of the vehicle, in handcuffs, and the car was vacant.

14 Q. Was one individual identified as the owner and driver of
15 the car? 10:13

16 A. At a point there was a gentleman that was identified as
17 the owner, and that was Mr. Afman.

18 Q. At some point, did the owner of the car, the driver of the
19 car, give consent to search the car?

20 A. Yes. He was being interviewed by Agent Lopez who obtained
21 consent from Mr. Afman, and Mr. Lopez communicated that consent
22 to me. 10:13

23 Q. And after you obtained consent to search the car, were you
24 part of the team that searched the vehicle that day?

25 A. I was. 10:14

1 Q. And can you describe for the jury how the search of that
2 vehicle -- how it happened, the steps that were taken?

3 A. Sure. Mr. Afman came to the car and he pointed out the
4 items in the vehicle that did not belong to him, that belonged
5 to the other passengers. We segregated those items. We
6 removed them from the car and set them aside. And then he --
7 when he was sure that no other -- none of the other items that
8 were left in the car belonged to the other individuals, we
9 commenced a search of the vehicle.

10 Q. While you were searching the vehicle, was someone also
11 taking photographs?

12 A. Yes. We begin our searches by taking what we call "entry
13 photos" or "beginning photos" prior to the search beginning,
14 and then photos were taken during the search procedure and at
15 the end of the search procedure.

16 Q. So you take photographs at the beginning to document the
17 condition that you find the items in?

18 A. Yes.

19 Q. As well as the vehicle in this case?

20 A. Yes.

21 Q. You take photographs during the course of the search just
22 so you can show where some of the items are in place?

23 A. Yes, ma'am.

24 Q. And you take photographs at the end to document what
25 you've taken out of the vehicle, what you've seized?

10:14

10:14

10:14

10:15

10:15

1 A. Yes, to document what we seized and the condition of the
2 vehicle that we left it in.

3 Q. And at the time, obviously, that you got there, there was
4 nobody in the car?

5 A. No. The car was empty.

10:15

6 Q. What happened to the items that were seized from the
7 vehicle that day?

8 A. The items that were identified that belonged to the other
9 individuals, not the owner of the vehicle, were segregated and
10 ultimately taken back to the FBI office in Riverside.

10:15

11 The items that were seized from the vehicle that were
12 -- we were told were owned by Mr. Afman were also seized and
13 then taken back to the FBI office in Riverside.

14 Q. Now, for example, some of those items were luggage?

15 A. Yes, ma'am.

10:15

16 Q. Did you search the inside of the luggage?

17 A. We did not.

18 Q. Why not?

19 A. The luggage was not owned by Mr. Afman, so he could not
20 provide consent, and we did not have a search warrant. So we
21 wanted to take it back to the office to be, out of an abundance
22 of caution, to ensure we got a search warrant prior to opening
23 the bags.

10:15

24 Q. And prior to testifying today, did you have an opportunity
25 to look at the items of evidence about which you're going to

10:16

1 testify today?

2 A. I did.

3 Q. Did you have also an opportunity to look at the
4 photographs that were taken that day?

5 A. Yes.

10:16

6 MS. DEWITT: At this time, Your Honor, I would ask to
7 have what has been marked for identification as Government's
8 Exhibit 47 placed before the witness.

9 THE COURT: Go ahead.

10 BY MS. DEWITT:

10:16

11 Q. Special Agent Staab, have you seen this exhibit before
12 today?

13 A. I have.

14 Q. What is it?

15 A. This is a printout of the digital photographs that were
16 taken during the day of the search.

10:16

17 Q. Do these photographs accurately reflect and depict the
18 vehicle that you searched that day?

19 A. They do.

20 Q. And do some of the items of the photographs in there
21 accurately depict the items found in the vehicle and how you
22 found them?

10:17

23 A. Yes, it does.

24 Q. And do they also accurately reflect the items that you
25 removed from the vehicle for further searching?

10:17

1 A. It does.

2 MS. DEWITT: At this time, Your Honor, the Government
3 would move to admit Government's Exhibit 47.

4 THE COURT: Any objection to 47?

5 MS. VIRAMONTES: No, Your Honor. 10:17

6 MR. THOMAS: No, Your Honor.

7 THE COURT: Thank you. 47 is ordered admitted.

8 You may publish.

9 (Government's Exhibit No. 47 was admitted.)

10 BY MS. DEWITT:

11 Q. Can you take a look at the second photograph in this
12 group?

13 A. Okay.

14 Q. What is this?

15 A. This is the car before we searched the vehicle. 10:17

16 Q. Can you look at -- so this has been moved out of the
17 center of the road?

18 A. Yes. The car was moved -- after the detainment of the
19 subjects, the car was moved out of the middle of the road so
20 that the occupants of the apartment complex could come and go. 10:18

21 Q. It looks like there is some items on top of the car?

22 A. Yes, ma'am.

23 Q. Do you know what those are?

24 A. It's the keys, and I believe the front area that's kind of
25 near the sunroof was some of the pocket litter in the driver's 10:18

1 possession when he was detained.

2 Q. Can I now ask you to look at the 17th item in this set,
3 the 17th photograph?

4 A. Okay.

5 Q. What is depicted in this photograph? 10:18

6 A. This is the rear of the car from the driver's side view,
7 and this is the luggage and the loose items in the car as we
8 found it before we removed it from the vehicle.

9 Q. There's a white plastic bag?

10 A. Yeah. The white plastic bag that appeared to have laundry 10:18
11 in it, a laundry basket, some of the books were -- appeared to
12 be Qurans, and then there was the green backpack down on the
13 floorboard that appeared to have a computer in it.

14 Q. Can you now take a look at the next photograph, the 17th
15 photograph in this set? 10:19

16 A. 18 or 17?

17 Q. Sorry. The 18th. Excuse me.

18 A. Okay.

19 Q. And what's depicted in that photograph?

20 A. This is the trunk of the vehicle, also from the driver's 10:19
21 side view, and it shows a blue American Tourister suitcase.
22 And it's kind of hard to tell from this photo, but toward the
23 top of the photograph and the top of the trunk there is a black
24 Adidas bag as well.

25 Q. That would be this right here? 10:19

1 A. Yes, ma'am.

2 Q. Can you please now take a look at the 19th photograph in
3 this set?

4 A. Okay.

5 Q. And what's depicted there? 10:20

6 A. This is also the trunk view, but this is from straight on.
7 And again, it's a little hard to tell, but you can see the
8 American Tourister bag and the Adidas bag in that same upper
9 right corner of the trunk.

10 Q. Can you now take a look at the 21st photograph in the set? 10:20

11 And what's depicted in that photograph?

12 A. This is the rear of the vehicle from the passenger side,
13 and it shows the laundry basket from the other view that had a
14 computer in it, an Xbox in it, and then some loose prayer rugs
15 on the seat, and this tan backpack also on the floorboard that
16 wasn't visible from the other side. 10:20

17 Q. And is there also -- there's a computer in the white
18 laundry basket?

19 A. Yes, ma'am.

20 Q. And if you could now look at the 29th photograph in this 10:20
21 set?

22 A. Okay.

23 Q. What's depicted in that photograph?

24 A. This is what's -- this is the inside of the contents of
25 this wallet that was found inside of the vehicle. The wallet 10:21

1 appeared to be Mr. Afman's. And of particular note was the Los
2 Angeles Gun Club Shooting Range business card directly to the
3 top of the wallet.

4 Q. And that would be the item in roughly the center of the
5 photograph? 10:21

6 A. Yes, ma'am. The white -- the all white business card.

7 That's it there.

8 Q. Los Angeles Gun Club. And you said this belonged to the
9 driver --

10 A. Yes, ma'am. 10:21

11 Q. -- Mr. Afman?

12 If you can now look at the 32nd photograph in the
13 set, please?

14 A. Okay.

15 Q. And what's depicted in that photograph? 10:21

16 A. There is some of the loose items that were found in the
17 car. There is a couple tickets to the Haunted Hollywood Sports
18 thing. But in the middle of the items are the VIP paintball
19 pass to SC Village in Chino -- excuse me -- in Corona.

20 Q. If you could now look at the 32nd photograph in this set,
21 please -- sorry. That was the 32nd. 10:22

22 The 40th in the set, please.

23 A. Okay.

24 Q. Can you explain to the jury what's being depicted in this
25 photograph? 10:22

1 A. This is one of the photos that we took during the search.
2 This depicts the wallet as we found it after we searched the
3 contents of the wallet. So the wallet was on the console. And
4 the No. 7 and the arrow is our items that we placed in the car
5 to call attention to the business card that was found within
6 the wallet. 10:22

7 Q. So just to be clear that the 7 is something that you --
8 you, when you're documenting where you found the item, you
9 would place there and the pointer is pointing to it to make it
10 clear what the item is that that references? 10:22

11 A. Yes, ma'am.

12 Q. Can you turn to the 55th photograph in this set?

13 A. Okay.

14 Q. And what is depicted in this photograph?

15 A. This is an overview photo after we completed the search. 10:23
16 It's showing the car and the items that we removed from the car
17 that were identified to not belong to Mr. Afman.

18 Q. And the 56th?

19 A. 56 is a close-up of a box that we boxed up, "we," the
20 search agents. These were the loose items that were on the 10:23
21 back seat of the car that we placed in the box to transport it
22 back to Riverside FBI.

23 Q. Can you look at the 57th?

24 What is that?

25 A. This is a close-up of the white trash bag that had the 10:23

1 clothing in it on the back seat of the car.

2 Q. 59th.

3 A. 59 is a close-up of the American Tourister bag that was in
4 the trunk of the car.

5 Q. And finally, the 60th photo? 10:24

6 A. 60 is a close-up of the green Jansport backpack and the
7 black Adidas bag that were also found in the vehicle.

8 Q. Prior to testifying today, did you have an opportunity to
9 look at these items that were seized from the car that day?

10 A. I did. 10:24

11 Q. Did you have an opportunity to confirm that they were --
12 the items that you're about to testify were in fact the same
13 items that you seized that day?

14 A. They are.

15 MS. DEWITT: Can you please -- please now ask to have 10:24
16 what has been previously marked for identification as
17 Government's Exhibit 9 placed in front of the witness.

18 BY MS. DEWITT:

19 Q. What is contained in Government's Exhibit 9?

20 A. This is the tan backpack that was found in the vehicle. 10:25

21 Q. And just for -- just so that I don't get the Court mad at
22 me --

23 A. Sorry.

24 Q. Until we have permission to publish these, if you could
25 just keep it down below. Once we get permission, we can show 10:25

1 it to the jury.

2 A. I apologize.

3 Q. So is that one of the items that you seized that day?

4 A. It is.

5 Q. And just for the record, that is -- that item does not any 10:25

6 longer contain the contents that were in it the day that you

7 found it; is that correct?

8 A. Correct.

9 MS. DEWITT: At this time, the Government would move 10:25
10 to admit Government's Exhibit 9.

11 THE COURT: Any objection to Exhibit 9?

12 MS. VIRAMONTES: No, Your Honor.

13 MR. THOMAS: No, Your Honor.

14 THE COURT: Thank you. It's ordered admitted.

15 And you may publish. 10:26

16 (Government's Exhibit No. 9 was admitted.)

17 BY MS. DEWITT:

18 Q. Now you can show it.

19 And this is, again, one of the items that was 10:26
20 depicted in the photographs that we just went through?

21 A. Yes, ma'am.

22 Q. Can you now take a look at what's been marked for 10:26
23 identification as Government's Exhibit 10?

24 What is that?

25 A. This is the black Adidas bag. 10:26

1 Q. And again, was this one of the items that you seized that
2 day?

3 A. Yes, it was.

4 Q. And again, it no longer has the content that was found in
5 it that day; is that correct? 10:26

6 A. That is correct.

7 MS. DEWITT: At this time, the Government would move
8 to admit Government's Exhibit 11 -- excuse me, 10.

9 THE COURT: Any objection?

10 MS. VIRAMONTES: No objection, Your Honor. 10:26

11 MR. THOMAS: No objection.

12 THE COURT: Thank you. Ordered admitted.

13 You may publish.

14 (Government's Exhibit No. 10 was admitted.)

15 BY MS. DEWITT: 10:27

16 Q. And that's also an item that was depicted in the
17 photographs we just saw?

18 A. Yes, ma'am.

19 MS. DEWITT: And if I could now ask to have what's
20 been previously marked for identification as Government's
21 Exhibit 11 placed in front of the witness? 10:27

22 BY MS. DEWITT:

23 Q. What is that?

24 A. This is the white laundry basket that was on the back seat
25 of the car. 10:27

1 Q. And again, one of the items that you seized that day from
2 the vehicle?

3 A. It is.

4 Q. And again, without the content in it at that time when you
5 seized it, in it? 10:27

6 A. Correct.

7 MS. DEWITT: At this time, the Government would move
8 to admit Government's Exhibit 11.

9 THE COURT: Any objection?

10 MS. VIRAMONTES: No, Your Honor. 10:28

11 MR. THOMAS: No, Your Honor.

12 THE COURT: Exhibit 11 is ordered admitted.

13 You may publish.

14 (Government's Exhibit No. 11 was admitted.)

15 MS. DEWITT: If I could now ask to have what's been
16 marked for identification as Government's Exhibit 12. 10:28

17 BY MS. DEWITT:

18 Q. What is that?

19 A. This is the white trash bag that had the clothes in it.

20 Q. And again, that was an item that you seized that day? 10:28

21 A. It is.

22 Q. And at the time, it was full of other items?

23 A. Correct.

24 Q. And that's also one of the items that was shown in the
25 pictures? 10:28

1 A. It is.

2 MS. DEWITT: At this time, I would move to admit
3 Government's Exhibit 12.

4 THE COURT: Any objection?

5 MS. VIRAMONTES: No, Your Honor. 10:28

6 MR. THOMAS: No, Your Honor.

7 THE COURT: Ordered admitted.

8 You may publish.

9 (Government's Exhibit No. 12 was admitted.)

10 MS. DEWITT: And if I could now ask to have what's 10:29
11 been previously marked for identification as Government's
12 Exhibit 11 placed in front of the witness? Excuse me.
13 Government's Exhibit 13.

14 BY MS. DEWITT:

15 Q. And what is that? 10:29

16 A. This is the green Jansport backpack that was on the
17 floorboard of the vehicle.

18 Q. And again, one of the items you seized that day?

19 A. It is.

20 Q. And no longer with the contents? 10:29

21 A. Correct.

22 Q. And it's one of the items that was depicted in the
23 photographs that we just saw?

24 A. It is.

25 MS. DEWITT: At this time, the Government would move 10:29

1 to admit Government's Exhibit 13.

2 THE COURT: Any objection to 13?

3 MS. VIRAMONTES: No, Your Honor.

4 MR. THOMAS: No, Your Honor.

5 THE COURT: 13 is ordered admitted. 10:29

6 You may publish.

7 (Government's Exhibit No. 13 was admitted.)

8 BY MS. DEWITT:

9 Q. Again, Special Agent Staab, you didn't actually search the
10 content of any of these? You weren't involved in that? 10:29

11 A. I did not, no.

12 Q. Can you now take a look at what's been marked for
13 identification as Government's Exhibit 14?

14 Just to speed things along, I believe there is two
15 boxes that relate to that exhibit. What's contained in those
16 two boxes, Special Agent Staab? 10:30

17 A. These are the loose items that were on the back seat of
18 the car that were seized and collected together and boxed up by
19 the FBI agents as we were done with the search.

20 Q. And in the box that contains some books, can you just
21 explain, generally, for the jury what's contained in that box? 10:31

22 A. There's several books related to the Quran, Book of
23 Healing, Book of Wisdom, approximately 20 books, I believe.
24 And then some prayer rugs, what I believe to be prayer rugs.

25 Q. And if I could ask you to look specifically at what's been 10:31

1 marked as Government's Exhibit 14-A26, if you can find that?

2 A. Okay.

3 Q. What's in that?

4 A. This is what I believe to be one of the prayer rugs.

5 MS. DEWITT: And, Your Honor, pursuant to our earlier 10:31
6 discussion, I'm going to not move all of these items in at this
7 time, but I would ask to move this particular item in so that
8 it can be published to the jury.

9 THE COURT: Any objection?

10 MS. VIRAMONTES: No, Your Honor. 10:32

11 MR. THOMAS: No, Your Honor.

12 THE COURT: And what's the exhibit number? Are you
13 admitting the whole box?

14 MS. DEWITT: The exhibit number is one item within
15 the box, Your Honor, which is 14-A26. 10:32

16 THE COURT: All right. 14-A26. All right. It's
17 admitted.

18 You may publish.

19 (Government's Exhibit No. 14-A26 was admitted.)

20 BY MS. DEWITT: 10:32

21 Q. Special Agent Staab, that's what you've identified as a
22 prayer rug that was found within that?

23 A. That is my belief, yes.

24 Q. For the record, Special Agent Staab, there is
25 approximately 22 books contained in that exhibit? 10:32

1 A. I believe so, yes.

2 Q. And then a DVD?

3 A. Correct.

4 Q. A skull cap?

5 A. Yes, ma'am.

10:33

6 Q. And in addition to that prayer rug that you just showed,

7 another prayer rug?

8 A. I believe two additional prayer rugs.

9 Q. Thank you.

10 Can you now please take a look at what's been marked

10:33

11 for identification as Government's Exhibit 15?

12 What is this?

13 A. This is the American Tourister suitcase that was in the
14 trunk of the vehicle.

15 Q. And again, was this one of the items that you seized that

10:33

16 day?

17 A. It is.

18 Q. And again, without any of the content in it?

19 A. Yes, that's correct.

20 Q. And one of the items that was depicted in the photographs

10:33

21 that we were reviewing earlier?

22 A. Correct.

23 MS. DEWITT: At this time, Your Honor, the Government
24 would move to admit Government's Exhibit 15.

25 THE COURT: Any objection to 15?

10:34

1 MS. VIRAMONTES: No, Your Honor.

2 MR. THOMAS: No, Your Honor.

3 THE COURT: It's ordered admitted.

4 You may publish.

5 (Government's Exhibit No. 15 was admitted.)

10:34

6 BY MS. DEWITT:

7 Q. Special Agent Staab, when you completed your search of the
8 vehicle that day, what did you do with the items of evidence
9 that you seized?

10 A. They were loaded into my FBI vehicle and transported back
11 to the Riverside FBI office.

10:34

12 Q. At that time, were they given to members of the
13 investigative team?

14 A. They were. I handed them off to Agent Burry who is a
15 member of the Joint Terror and Task Force.

10:34

16 Q. And it's your understanding that they then waited to do a
17 further search until they could get a search warrant?

18 A. That is my understanding, correct.

19 Q. And just to be clear, Agent Staab, other than executing
20 the -- or being part of the search team on this particular day
21 in the search of that vehicle, did you have any other
22 involvement in the underlying investigation of this case?

10:34

23 A. I did not.

24 MS. DEWITT: No further questions at this time, Your
25 Honor.

10:35

1 THE COURT: Ms. Viramontes, you may cross-examine.

2 MS. VIRAMONTES: Thank you.

3 **CROSS-EXAMINATION**

4 BY MS. VIRAMONTES:

5 Q. You're a special agent with FBI, correct? 10:35

6 A. Correct.

7 Q. And as part of -- you received FBI training that FBI
8 agents undergo, correct?

9 A. Correct.

10 Q. And part of that training was how to testify at trials, 10:35
11 correct?

12 A. Yes, ma'am.

13 Q. The FBI wants you to appear collective or clinical when
14 you testify, correct?

15 A. They want me to tell the truth. 10:35

16 Q. You testified that Mr. Afman was the driver of the car,
17 correct?

18 A. I don't believe I -- I believe I said he was identified as
19 the driver of the vehicle, yes.

20 Q. And seated next to him was the confidential informant, 10:36
21 correct?

22 A. I don't know that, ma'am.

23 Q. When you did a search of the car, you didn't find any
24 guns, correct?

25 A. Not when we searched the car, no, ma'am. 10:36

1 Q. You didn't find any ammunition, correct?

2 A. No, ma'am.

3 Q. You did not find any manuals on how to operate guns,
4 correct?

5 A. Not that I recall, no.

10:36

6 Q. You did not find any instructional DVDs on how to operate
7 guns, correct?

8 A. No, ma'am.

9 Q. You didn't find any explosives, correct?

10 A. No, ma'am.

10:36

11 Q. You didn't find any improvised explosive devices or
12 homemade bombs, did you?

13 A. No, ma'am.

14 Q. You did not find any instructions on how to make
15 explosives, correct, in the car?

10:36

16 A. In the car, not that I recall, no.

17 Q. You did not find any materials to build explosives,
18 correct?

19 A. Not in the car, no.

20 Q. You did not find any materials to build an improvised
21 explosive device, correct?

10:36

22 A. Not in the car, no, that I'm aware of.

23 Q. You did not find any weapons of mass destruction, correct?

24 A. No, I did not.

25 Q. You did not find any instructions on how to assemble

10:37

1 weapons of mass destruction, correct?

2 A. Not in the car, no.

3 Q. You did not find any terrain maps of Afghanistan, correct?

4 A. I don't recall. I believe we found a map, but I'm not
5 sure where it was found.

10:37

6 Q. You did not find any terrain maps of Pakistan, correct?

7 A. Again, I don't recall. I know we found a map. I'm not
8 sure if it was Afghanistan or Pakistan, or where it was
9 located.

10 Q. Are you aware that there is no terrain map of Afghanistan
11 listed on the evidence log?

10:37

12 MS. DEWITT: Objection, Your Honor. No foundation.

13 MS. VIRAMONTES: I believe he testified --

14 THE COURT: Go ahead.

15 MS. VIRAMONTES: I'm sorry. I believe he testified
16 that he was involved in evidence collection.

10:37

17 THE COURT: Well, when you say the "evidence log" --
18 well, clarify your question.

19 MS. VIRAMONTES: Sure.

20 BY MS. VIRAMONTES:

10:37

21 Q. Are you familiar with the evidence log that was completed
22 after the stop of this car?

23 A. I'm familiar with the log that was completed after we
24 searched the vehicle, but not the log that was created during
25 the search of the contents of the vehicle of the --

10:38

1 Q. Are you -- I'm sorry.

2 A. I was going to say of the items that were removed that
3 were not searched.

4 Q. Are you aware that on the log of items completed after the
5 search of the car there is no listing of a terrain map for
6 Afghanistan? 10:38

7 MS. DEWITT: Objection, Your Honor. No foundation.

8 THE COURT: Sustained.

9 BY MS. VIRAMONTES:

10 Q. Are you aware that there are no terrain maps of Yemen,
11 correct? 10:38

12 MS. DEWITT: Objection, Your Honor. Vague.

13 MS. VIRAMONTES: I'm sorry.

14 THE COURT: Sustained. Go ahead.

15 BY MS. VIRAMONTES:

16 Q. You did not find any terrain maps of Yemen, correct?

17 A. Not that I recall, no.

18 Q. You did not find any terrain maps of Saudi Arabia,
19 correct?

20 A. Again, not that I recall. But I do recall seeing maps in
21 the vehicle. 10:38

22 Q. You did not find any terrain maps of Turkey, correct?

23 A. Not that I recall, no.

24 Q. You did not find any terrain maps of the United Arab
25 Emirates, correct? 10:38

1 A. Not that I recall.

2 Q. You did not find any terrain maps of Syria, correct?

3 A. Not that I recall.

4 Q. You did not find any maps of U.S. military bases in the
5 United States, correct?

10:38

6 A. Not that I recall.

7 Q. You did not find any maps of U.S. military bases in
8 Afghanistan, correct?

9 A. Not that I recall.

10 Q. You did not find any maps of U.S. military bases in
11 Pakistan, correct?

10:39

12 A. Not that I recall.

13 Q. You did not find any maps of U.S. military bases in Yemen,
14 correct?

15 A. Not that I recall.

10:39

16 Q. You did not find any maps of any U.S. military bases in
17 Saudi Arabia, correct?

18 A. Not that I recall, no.

19 Q. You did not find any maps of any U.S. military bases in
20 Turkey, correct?

10:39

21 A. Not that I recall.

22 Q. You did not find any maps of any U.S. military bases in
23 the United Arab Emirates, correct?

24 A. Not that I recall.

25 Q. And you did not find any maps of U.S. military bases in

10:39

1 Syria, correct?

2 A. Not that I recall.

3 Q. You did not find any written plans to attack any military
4 bases, correct?

5 A. Not in the car, no.

10:39

6 Q. You did not find any lists of U.S. military personnel,
7 correct?

8 A. Not in the car, no.

9 Q. You did not find any pictures of any federal buildings,
10 correct?

10:39

11 A. Not in the car, no.

12 Q. You did not find any maps of federal buildings, correct?

13 MS. DEWITT: Objection, Your Honor. Relevance.

14 THE COURT: Overruled.

15 BY MS. VIRAMONTES:

10:40

16 Q. You did not find any maps of federal buildings, correct?

17 A. Not in the car, no.

18 Q. You did not find any blueprints or schematics for any
19 federal buildings, correct?

20 A. Not in the car, no.

10:40

21 Q. You did not find any pictures of American landmarks, like
22 Disneyland, correct?

23 A. Not in the car.

24 Q. You did not find any fake passports for Mr. Santana,
25 correct?

10:40

1 A. Not in the car, no.

2 Q. You didn't find any fake IDs for Mr. Santana, correct?

3 A. Not in the car.

4 Q. You didn't find a fake driver's license for Mr. Santana,

5 correct? 10:40

6 A. Not in the car.

7 Q. You didn't find a fake passport for Mr. DeLeon, correct?

8 A. Not in the car.

9 Q. You didn't find any fake IDs for Mr. DeLeon, correct?

10 A. Not in the car. 10:40

11 Q. And you didn't find a fake driver's license for

12 Mr. DeLeon, correct?

13 A. Not in the car.

14 Q. You didn't find a fake passport for Mr. Gojali, correct?

15 A. Not in the car. 10:40

16 Q. You didn't find any fake IDs for Mr. Gojali, correct?

17 A. Not in the car.

18 Q. And you did not find a fake driver's license for

19 Mr. Gojali, correct?

20 A. Not in the car. 10:40

21 Q. You didn't find any cold-weather gloves in the car,

22 correct?

23 A. Not in the car, no.

24 Q. You didn't find any snow boots, correct?

25 A. Not in the car. 10:41

1 Q. You didn't find any cold-weather masks, correct?

2 A. Not in the car.

3 Q. You didn't find any foreign currency, correct?

4 A. Not in the car.

5 Q. You didn't find any Traveler's Cheques, correct? 10:41

6 A. Excuse me. Not in the car.

7 Q. You didn't find any cash, correct?

8 A. Not in the car.

9 Q. Let's talk about what you did find.

10 You found an iPod, correct? 10:41

11 A. Not in the car.

12 Q. You found an Xbox, correct?

13 A. I believe it was in the laundry basket, yes.

14 Q. You testified that you found that laundry basket behind
15 you in the car, correct? 10:41

16 A. Yes, ma'am.

17 Q. And you also found MBA-12, an Xbox video game, correct?

18 A. I don't recall seeing that. I didn't search the contents
19 of the items in the vehicle.

20 Q. Do you recall seeing *Tiger Woods PGA Tour* video game for
21 Xbox? 10:41

22 A. No, ma'am.

23 Q. What about *FIFA*?

24 A. No, ma'am.

25 Q. Do you recall seeing a Kansas basketball jersey? 10:41

1 A. No, ma'am.

2 Q. Do you recall seeing a Miami Dolphins T-shirt?

3 A. No, ma'am.

4 Q. Do you recall seeing the letter that Mr. DeLeon wrote to
5 his daddy? 10:42

6 A. No, ma'am. I didn't search the contents of the items in
7 the vehicle.

8 Q. Do you recall seeing the letter Mr. DeLeon wrote to his
9 mommy?

10 A. Again, same answer. I did not search the contents of the 10:42
11 vehicle.

12 MS. VIRAMONTES: I have no further questions at this
13 time, Your Honor.

14 THE COURT: Thank you.

15 Mr. Thomas. 10:42

16 MR. THOMAS: I have no questions, Your Honor.

17 THE COURT: Any redirect?

18 MS. DEWITT: Just one question.

19 **REDIRECT EXAMINATION**

20 BY MS. DEWITT: 10:42

21 Q. Special Agent Staab, when you say "not in the car," you
22 mean not in the car other than what might have been in the
23 contents of the items within the car?

24 A. Correct, ma'am. We did not search the contents that --

25 MS. VIRAMONTES: Objection, Your Honor. Leading. 10:42

1 THE COURT: Overruled.

2 Go ahead.

3 THE WITNESS: It is correct. We did not search the
4 contents of the vehicle that were identified to not be owned by
5 Mr. Afman. We only searched Mr. Afman's vehicle and his
6 possessions.

10:42

7 BY MS. DEWITT:

8 Q. And the contents of all those different items of luggage
9 and containers were searched by somebody else?

10 A. Correct.

10:43

11 MS. DEWITT: Nothing further, Your Honor.

12 THE COURT: Thank you. You may step down.

13 All right. Ladies and gentlemen, we will take our
14 mid-morning break, and we'll be in recess for 15 minutes.

15 Remember the admonitions I've given you before. Do

10:43

16 not discuss the case amongst yourselves, or with anyone else,
17 or communicate in any fashion electronically, or physically, or
18 otherwise, about the case, any issue in the case, any of the
19 participants in the trial, anything related to the case in the
20 broadest possible sense. Don't do any research about the case
21 in any manner. Don't make up your minds about the case or any
22 issues in the case.

10:43

23 Thank you. You're excused for 15 minutes.

24 (Recess)

25 THE COURT: Let the record reflect the presence of

11:03

1 all members of the jury, all counsel, and the defendants
2 present.

3 You may call your next witness.

4 MS. DEWITT: The United States calls Joseph Sirko.

5 THE CLERK: Please raise your right hand.

11:04

6 **GOVERNMENT'S WITNESS, JOSEPH SIRKO, WAS SWORN**

7 THE CLERK: Thank you. You may be seated.

8 Please state your full name and spell it for the
9 record.

10 THE WITNESS: Joseph Sirko. J-O-S-E-P-H,
11 E-U-G-E-N-E, S-I-R-K-O.

11:04

12 THE COURT: Thank you. You may inquire.

13 **DIRECT EXAMINATION**

14 BY MS. DEWITT:

15 Q. By who are you employed?

11:04

16 A. With the FBI.

17 Q. How long have you been with the FBI?

18 A. Five years, ma'am.

19 Q. What is your title at the FBI?

20 A. A special agent.

11:04

21 Q. Are you currently assigned to a particular squad?

22 A. Yes, ma'am, I am.

23 Q. And what squad is that?

24 A. I work on I3. It's a HUMINT squad.

25 Q. Can you explain what that is.

11:05

1 A. It's -- basically, we target individuals for recruitment
2 to provide us with intelligence.

3 Q. And directing your attention now to the date of
4 November 16th, 2012.

5 On that day, did you respond to the scene of an 11:05
6 arrest in Chino, California?

7 A. Yes, ma'am, I did.

8 Q. And where was the location that you responded to?

9 A. 12350 Marshall Avenue.

10 Q. Was that in a parking lot area? 11:05

11 A. Yes, ma'am.

12 Q. What did you see when you arrived at the Marshal Avenue
13 location that morning?

14 A. I saw a silver-colored vehicle that was stopped, all the
15 doors were open. There was one suspect that was in custody at
16 the bumper of that vehicle, and three others that were adjacent
17 to a garage structure, also in custody. 11:05

18 Q. And I'm sorry, approximately what time was it that you
19 arrived?

20 A. It was approximately 0920. 9:20 in the morning. 11:06

21 Q. So when you arrived, the vehicle had been secured?

22 A. Yes.

23 Q. And the individuals in the vehicle were being detained?

24 A. That's correct.

25 Q. What did you do when you arrived? 11:06

1 A. When I arrived, myself and Special Agent Wade Lee
2 approached Mr. DeLeon, the agents that were detaining him. I
3 swapped out handcuffs, per our protocol, and at that time,
4 Mr. -- Special Agent Lee was handed pocket litter that was on
5 the person of Mr. DeLeon, which included a BlackBerry and a
6 wallet. 11:06

7 Q. And you refer to an individual that you detained that day,
8 or that you took custody of that day, by the name of
9 Mr. DeLeon. Do you see that person that you detained that day
10 in the courtroom today? 11:06

11 A. Yes, ma'am, I see him.

12 Q. And for the record, can you identify where the person is
13 seated?

14 A. He's seated over there. He's got glasses on, black
15 colored. 11:07

16 MS. DEWITT: May the record indicate he has
17 identified the defendant Mr. DeLeon?

18 THE COURT: So noted for the record.

19 BY MS. DEWITT:

20 Q. When you arrived, you arrived with Special Agent Lee,
21 Wade? 11:07

22 A. Yes, ma'am.

23 Q. And you switched out -- you switched out the handcuffs
24 that were on Mr. DeLeon?

25 A. That's correct. 11:07

1 Q. Okay. And when you arrived, were there certain items of
2 evidence at his feet?

3 A. Yes. There was a wallet and BlackBerry cellular phone.

4 Q. What did you do with those items?

5 A. Those items were handed to Special Agent Lee by the member 11:07
6 of the SWAT team that was detaining Mr. DeLeon at the time.

7 MS. DEWITT: Can I now ask to have what's been
8 previously marked for identification as Government's Exhibit
9 16A placed in front of the witness?

10 THE COURT: Go ahead. 11:07

11 MS. DEWITT: I'm sorry. It's in his witness
12 notebook. I apologize, Your Honor.

13 THE COURT: Did you say 46?

14 MS. DEWITT: 16A. 16A should be --

15 THE AGENT: Your Honor, there is two items contained 11:08
16 within the notebook, Item 16A and Item 46. I apologize.

17 THE COURT: That's all right.

18 BY MS. DEWITT:

19 Q. So Special Agent Sirko, just to get back to where we were,
20 you took defendant DeLeon back to the FBI; is that correct? 11:08

21 A. Yes, ma'am.

22 Q. And at some point later did you process the items that had
23 -- that were in his possession that day?

24 A. Yes, I did.

25 Q. And one of them you mentioned was a BlackBerry phone? 11:09

1 A. That's correct.

2 Q. And were there also some items in his wallet and in his
3 pockets?

4 A. Yes, ma'am, that's correct. I took the items out and I
5 took photocopies of the items that were inside the wallet. 11:09

6 Q. If you could take a look at what's been marked for
7 identification as Government's 16A, which I now think is in
8 front of you, what is that item? What is that exhibit?

9 A. This is an exhibit containing the photocopies of the items
10 that were in Mr. DeLeon's wallet. 11:09

11 MS. DEWITT: And at this time, Your Honor, the
12 Government would move to admit Government's Exhibit 16A.

13 THE COURT: Any objection to 16A?

14 MS. VIRAMONTES: No, Your Honor.

15 MR. THOMAS: No, Your Honor. 11:09

16 THE COURT: Thank you. It's ordered admitted.

17 You may publish.

18 (Government's Exhibit No. 16A was admitted.)

19 BY MS. DEWITT:

20 Q. Special Agent Sirk, can you look at the first page in
21 that exhibit. 11:09

22 A. Yes, ma'am.

23 Q. And directing your attention to the top right-hand corner,
24 what is that?

25 A. The top right-hand corner is the back portion of an LAX 11:09

1 Firing Range membership card, I believe.

2 Q. And if I could direct your attention to what I think is
3 the fifth page in that exhibit?

4 A. Yes, ma'am.

5 Q. Is that item that's depicted at the top right-hand corner
6 the front page of that particular exhibit? 11:10

7 A. That's correct.

8 Q. Okay. And that is a card for an LAX Firing Range at
9 Manchester -- on Manchester Boulevard, in Inglewood,
10 California? 11:10

11 A. Yes, ma'am.

12 Q. And going back to the first page, directing your attention
13 to the item on the right-hand corner that's second down.

14 A. Yes, ma'am. It's a business card for the Los Angeles Gun
15 Club, indoor pistol shooting range, located at 1375 East 6th
16 Street, in Los Angeles, California. 11:11

17 Q. And again, this is a photograph of an item that was in
18 defendant DeLeon's wallet the day he was taken into custody?

19 A. That's correct.

20 Q. And if I could ask you to look at the second page in this
21 exhibit? 11:11

22 A. Yes, ma'am.

23 Q. And if you could direct your attention to the item on the
24 left-hand side that is four down?

25 A. Yes, ma'am. This is the legal permanent resident card of 11:11

1 Mr. DeLeon.

2 Q. That was an item that was found in his wallet?

3 A. That's correct.

4 Q. And if I could direct your attention to the top right-hand
5 corner, what is that item? 11:11

6 A. It's an employment authorization card, also in the name of
7 Mr. DeLeon.

8 Q. And that's a card that would have given him authorization
9 to work in the United States as a legal permanent resident?

10 A. Yes, ma'am. 11:12

11 Q. And if I could direct your attention to the seventh page
12 in that exhibit?

13 A. Yes, ma'am.

14 Q. What is depicted on that page?

15 A. Those are copies of Post-it notes that were contained
16 within Mr. DeLeon's wallet with handwriting on them. The first
17 one had *Dubai to Afghanistan*, and had some numbers, 200 to 500,
18 and then *Mexico to Dubai* also written on that same Post-it
19 note. 11:12

20 And then the second one is addresses, and those
21 addresses correspond with the two shooting ranges that we
22 previously discussed. 11:12

23 Q. So you're referring to the 1375 is the address for one of
24 the two gun ranges that were depicted in the two business
25 cards? 11:13

1 A. Yes, ma'am, that's correct.

2 Q. I'm sorry, that one -- I misspoke. That one card is not
3 actually a business card, it's a permit to allow you to shoot;
4 is that correct?

5 A. That's correct. It's a range identification card for the 11:13
6 shooter.

7 Q. And that would allow somebody to shoot at that location?

8 A. Yes, ma'am.

9 Q. And the next page, which is the eighth page, if I could
10 direct your attention to the second Post-it note. 11:13

11 Do you know what that address is for?

12 A. Not to my recollection, no, ma'am. I don't know
13 specifically what that address corresponds to.

14 Q. There is a note under it?

15 A. Yes. It says, *Shotguns only?* with a question mark. 11:13

16 Q. And directing your attention to the next couple of pages
17 9, 10, 11, and 12, if you could display the first page, that
18 would be fine, and describe for the jury what's contained in
19 those pages.

20 A. Yes, ma'am. There is various Wells Fargo transaction 11:14
21 records to include deposits and balance inquiries. For
22 instance, there is a deposit that was on the 21st of
23 September 2012 in the amount of \$2,154. There was also a
24 deposit made on the 13th of November of 2012 in the amount of
25 \$1,400.

1 There is also various receipts from gas stations and
2 the like.

3 Q. That morning when you took defendant DeLeon into custody,
4 what did you do -- where did you take him after that?

5 A. We took him to the Riverside resident agency for interview 11:15
6 and processing. Subsequent to that, we took him to the
7 sheriff's department central jail for processing there in San
8 Bernardino.

9 Q. Were you also that day involved in the search of certain
10 items of luggage?

11 A. Not that day. It was actually two days later on the 18th
12 of November.

13 Q. Were you aware that certain -- let me back up.

16 A. Yes, ma'am.

17 Q. And were you subsequently involved in searching the
18 content of those items?

19 A. Yes, I was.

20 Q. How did you become aware of the fact that certain items
21 had been seized from the vehicle that day?

22 A. Back at the office, the resident agency, I witnessed
23 Special Agent Staab locking those items up into the evidence
24 locker. I believe he turned over custody of those items to
25 Special Agent Martin Burry, and then they were secured at the

1 office space in Riverside.

2 Q. And you didn't search them at that time?

3 A. No, ma'am, I did not.

4 Q. Why not?

5 A. It was my understanding that we had not been issued a
11:16
6 warrant yet at that time, to search those items.

7 Q. So did you wait until you got a warrant?

8 A. Yes, we did.

9 Q. Did you subsequently search those items?

10 A. Yes, two days later, on the 18th of November.
11:16

11 Q. Were those items also, that you searched two days later,
12 also photographed?

13 A. Yes, ma'am, they were.

14 Q. And can you sort of just describe, generally, what type of
15 photographs you would have taken of those items?
11:16

16 A. Yes. Generally, what we would do is we would take photos
17 of -- we take, first, a photo of all of the items. So
18 basically, that day, we put the items on a table and we took
19 one overall picture of all the items, and then individually we
20 took pictures of each item before and then after they were
21 opened, to show the contents.
11:16

22 And then we took a picture of all the items after
23 they were seized as evidence, secured, either in a box, maybe a
24 plastic bag, depending on what the item was, and then we took a
25 final, or what we call an *exit photo*. And all of those photos
11:17

1 would have been logged in a photo log.

2 Q. Why do you take photographs?

3 A. We take photos to ensure accuracy.

4 Q. And do you also do it to document what you're looking at?

5 A. Yes, ma'am, that's correct.

11:17

6 MS. DEWITT: I'd ask now to have what's been
7 previously marked for identification as Government's Exhibit 46
8 be placed in front of the witness, and I believe it is.

9 BY MS. DEWITT:

10 Q. Special Agent, do you have in your binder Government's
11 Exhibit 46?

11:17

12 A. Yes, ma'am, I do.

13 Q. What is that?

14 A. It's a list of pictures that we took during the execution
15 of the search warrant.

11:17

16 Q. Do these photographs accurately depict how those items
17 appeared the day that you searched them?

18 A. Yes, ma'am, they do.

19 Q. As well as the content of those items?

20 A. Yes, ma'am.

11:18

21 MS. DEWITT: At this time, Your Honor, the Government
22 would move to admit Government's Exhibit 46.

23 THE COURT: Any objection to 46?

24 MS. VIRAMONTES: No, Your Honor.

25 MR. THOMAS: No, Your Honor.

11:18

1 THE COURT: Thank you. 46 is ordered admitted.

2 You may publish.

3 (Government's Exhibit No. 46 was ordered admitted.)

4 MS. DEWITT: And at this time, I would ask to have
5 page 29 of this exhibit published. And, Your Honor, for your
6 purposes, I believe you have a copy that has had the page
7 numbers written at the bottom so it's easier to find.

8 THE COURT: Thank you.

9 BY MS. DEWITT:

10 Q. What's depicted in this photograph, Special Agent Sirk? 11:18

11 A. These are the items that were seized and subsequently
12 searched from the vehicle at the takedown location on the 16th
13 of November.

14 Q. So does this picture essentially represent all of the
15 different containers that you searched that day? 11:18

16 A. Yes, ma'am, it does.

17 Q. With the exception of a box in the front, which contains
18 loose items?

19 A. That's correct. The box in the front was put -- there
20 were items that were loose in the vehicle that were placed
21 inside that box. The second box in the back was containing
22 that -- as you can see, it's a plastic bag. That plastic bag
23 was just loose in the vehicle, so we placed it inside that box
24 just to contain the contents of it.

25 Q. And if I could now ask you to look at what's been 11:19

1 identified as page 33 in Government's Exhibit 46?

2 A. Yes, ma'am.

3 Q. What's depicted in this photograph?

4 A. This is a backpack that was seized in the vehicle and the
5 contents laid out on the table. That's everything that was
6 inside the backpack. 11:19

7 MS. DEWITT: At this time, I would ask to have what's
8 been previously introduced as Government's Exhibit 9 placed in
9 front of the witness.

10 BY MS. DEWITT: 11:19

11 Q. Special Agent Sirko, is that the same backpack that's
12 depicted in the photograph up on the screen?

13 A. Yes, ma'am, it is.

14 Q. Is that one of the items that you searched the content of?

15 A. Yes, ma'am. 11:20

16 Q. And are the items that are depicted in this photograph all
17 of the items that came out of that backpack?

18 A. That's correct.

19 Q. And can you generally describe for the jury what was
20 contained in that backpack? 11:20

21 A. Yes, ma'am. It was an article -- several articles of
22 clothing, several pairs of socks, some boxer shorts, some
23 T-shirts, some beanies, some, like, stocking caps.

24 MS. DEWITT: At this time, I would ask to have what's
25 been previously marked for identification as Government's 11:20

1 Exhibit 9-A1 through 24 placed in front of the witness.

2 BY MS. DEWITT:

3 Q. What's in that box?

4 A. These are the contents of the backpack.

5 Q. And again, are those items generally that are in that
6 exhibit -- do those match up with the items that are depicted
7 in the photograph that's up on the screen?

8 A. Yes, ma'am, they do.

9 MS. DEWITT: Can I now have what's been previously
10 marked for identification as Government's Exhibit 9-A25 and 26
11 placed before the witness?

12 Your Honor, instead of Government's Exhibits 25 and
13 26, I would ask to have what's been previously marked for
14 identification as Government's Exhibits 27 and 28 placed in
15 front of the witness?

16 THE COURT: All right. 27 and 28. And they have not
17 been admitted, correct?

18 MS. DEWITT: That's correct, Your Honor.

19 BY MS. DEWITT:

20 Q. And, Special Agent Sirko, what's contained, first, in
21 Government's Exhibit 27?

22 A. It's a comb. It's a black comb with a blue handle. It's
23 depicted there on the picture, on the front of that table.

24 Q. And what is in Government's Exhibit 28?

25 A. 28 is a black pen, also depicted on the table in the

11:21

11:21

11:23

11:23

11:23

1 picture.

2 Q. So those were two additional items that were found in the
3 tan backpack?

4 A. Yes, ma'am, that's correct.

5 Q. And you mentioned that before you testified today, you had 11:24
6 an opportunity to confirm that these were all items that were
7 contained within the backpack?

8 A. That's correct.

9 Q. How did you do that? How were you able to confirm that?

10 A. I went to the evidence room, and I went through the 11:24
11 exhibit item by item, and I checked it, cross-referenced it
12 with my log that I took that day, on the 18th, when we actually
13 did the inventory of all the items that were inside the
14 contents.

15 MS. DEWITT: Can I now ask to have what has been 11:24
16 previously admitted as Government's Exhibit 10 placed before
17 the witness?

18 BY MS. DEWITT:

19 Q. Special Agent Sirko, is this also another item for which
20 you searched the contents of? 11:25

21 A. Yes, ma'am, that's correct.

22 Q. And that was on November 18th?

23 A. Yes.

24 MS. DEWITT: And at this time, I would ask to have 11:25
25 what has been marked for identification as Government's

1 Exhibit 10-A1 through 10-A31 placed before the witness.

2 And while the witness is looking at that, can I also
3 ask to have Government's Exhibit 46 at page 38 displayed?

4 BY MS. DEWITT:

5 Q. Special Agent Sirko, is this a photograph that you took 11:26
6 before searching, that represents the black duffel bag?

7 A. Yes, ma'am.

8 Q. And if you could take a look at the next page in that
9 exhibit, which is page 39 of Exhibit 46?

10 A. Yes, ma'am. That is a picture of all the contents from 11:26
11 the black duffel bag, laid out on the table.

12 Q. You now have Government's Exhibit 10 in front of you.

13 What is that?

14 A. This is the articles of clothing that were contained in
15 the black duffel bag. I'm not sure if the shoes are contained 11:26
16 in a different exhibit or not, but --

17 Q. So this is part of the contents of the black duffel bag?

18 A. Yes, ma'am.

19 Q. Can you just generally describe for the jury what you
20 found in this duffel bag? 11:26

21 A. Various articles of clothing, several pairs of socks,
22 boxer shorts, pants, shirts.

23 Q. Approximately 30-some odd items?

24 A. Yes, ma'am.

25 MS. DEWITT: If I could now ask to have what's been 11:27

1 marked for identification as Government's Exhibit 32 and 33
2 placed before the witness?

3 BY MS. DEWITT:

4 Q. What is Government's Exhibit 10-A32?

5 A. This is the black Adidas flip-flops that you see in the
6 right-hand corner, upper right of that photo. And the other
7 item is the dress shoes that are also adjacent to those black
8 Adidas. And if you recall from the last photo, they were at
9 the top of the bag as the bag was opened.

10 MS. DEWITT: And can I now have what's been
11 previously marked for identification as Government's
12 Exhibit 10-A34 placed in front of the witness?

13 BY MS. DEWITT:

14 Q. Do you have that in front of you?

15 A. Yes, ma'am.

16 Q. What is that of?

17 A. It's a comb.

18 Q. Is that one of the items you found in the bag?

19 A. That's correct.

20 MS. DEWITT: And if I could now ask to have what's
21 been previously marked for identification as 10-A35?

22 BY MS. DEWITT:

23 Q. What's contained in Government's Exhibit 10-A35?

24 A. The contents are the iPod that you see in the front of the
25 table, in the center, and the power cord, and there is a

11:27

11:28

11:28

11:28

11:29

1 sleeve, like a -- basically, a case for that iPod that are
2 adjacent to the wall there, in the middle on the right-hand
3 side.

4 Q. And for the record, Special Agent Sirko, can you identify
5 the social security -- the serial numbers, excuse me, that's on 11:29
6 the back of the iPod?

7 A. Bear with me, ma'am, to read it. Yes. It's
8 7-Juliet-8393-November-73-Romeo -- looks like either an Oscar
9 or a delta.

10 MS. DEWITT: And at this time, may I ask to have 11:30
11 what's been previously marked for identification as
12 Government's Exhibit A -- 10-A36 and 10-A37?

13 THE WITNESS: Yes, ma'am.

14 BY MS. DEWITT:

15 Q. What is that? 11:31

16 A. 10-A36 is a Palm power adapter plug. 10-A37 is a HTC
17 power cord.

18 MS. DEWITT: At this time, Your Honor, the Government
19 would move to admit Government's Exhibits 10-A32 through 33,
20 34, 35, 36, and 37. 11:31

21 THE COURT: Any objection to any of those?

22 MS. VIRAMONTES: No, Your Honor.

23 MR. THOMAS: Your Honor, can we approach sidebar?

24 THE COURT: If you're going to make an objection, we
25 can take it up -- do you need to display those exhibits at this 11:31

1 time?

2 MR. THOMAS: Well, Your Honor, I don't have an
3 objection to them. I just don't have copies of what they are
4 putting up.

5 THE COURT: Why don't you talk to -- you want to 11:32
6 consult with counsel?

7 (Counsel confer.)

8 MR. THOMAS: I think we've solved it, Your Honor.

9 THE COURT: Do you have any objection?

10 MR. THOMAS: No, I don't have any objection. 11:33

11 THE COURT: Ms. Viramontes, you did not have any
12 objection?

13 MS. VIRAMONTES: No, Your Honor.

14 THE COURT: So that was 10-A32 through 37, correct?

15 MS. DEWITT: That's correct, Your Honor. 11:34

16 THE COURT: Ordered admitted.

17 You may publish.

18 (Government's Exhibit Nos. 10-A32 through 10-A37 admitted.)

19 MS. DEWITT: And I've -- per our earlier agreement, I
20 deferred moving in A1 through A31 at this time. 11:34

21 THE COURT: All right. Thank you.

22 MS. DEWITT: At this time, I'd ask to have what has
23 been previously moved into evidence as Government's Exhibit 11
24 placed before the witness.

25 I'm sorry. I did miss one thing. If we could go 11:34

1 back.

2 Could you pull out what was marked as 10-A35, the
3 iPod, and just show that to the jury, please?

4 Thank you.

5 BY MS. DEWITT:

11:35

6 Q. Going back to Government's Exhibit 11. I apologize for
7 skipping around.

8 Do you recognize that item?

9 A. Yes, ma'am.

10 Q. Is that one of the items for which you searched the
11 content on that Sunday --

11:35

12 A. Yes.

13 Q. -- on November 18th?

14 A. Yes.

15 MS. DEWITT: Now showing you what's been marked for
16 identification as Government's Exhibit 11-A6. Can you place
17 that before the witness?

11:35

18 BY MS. DEWITT:

19 Q. Special Agent Sirk, do you recognize that item?

20 A. Yes, ma'am.

11:36

21 Q. What is it?

22 A. It's a Vaio laptop that was contained within the
23 Exhibit 11, the clothes basket.

24 Q. That's one of the items that we've seen today, that you
25 searched the content of the white basket?

11:36

1 A. Yes, ma'am, that's correct.

2 Q. For the record, can you identify the serial number for
3 that particular Sony Vaio laptop?

4 A. The serial number is 275180313006036.

5 MS. DEWITT: At this time, I would move to admit 11:37
6 Government's Exhibit 11-A6, Your Honor.

7 THE COURT: Any objection?

8 MS. VIRAMONTES: No, Your Honor.

9 MR. THOMAS: Oh, no, Your Honor.

10 THE COURT: Any objection? All right. Ordered 11:37
11 admitted.

12 You may publish.

13 (Government's Exhibit No. 11-A6 was admitted.)

14 BY MS. DEWITT:

15 Q. Can you show that item to the jury, please. 11:37

16 Again, that was an item that was found in the white
17 laundry basket?

18 A. That's correct.

19 Q. And the white laundry basket was one of the items that
20 came out of the vehicle? 11:37

21 A. Yes, ma'am.

22 Q. On the search on the 16th?

23 A. Yes.

24 MS. DEWITT: Can I have one moment, Your Honor?

25 THE COURT: Yes. 11:38

1 MS. DEWITT: Thank you, Your Honor.

2 At this time, I would ask to have what's been marked
3 for identification as Government's Exhibit 11-A7 placed in
4 front of the witness. And while that's being done, can I ask
5 to have 46 -- page 55 of 46 put up on the screen? 11:38

6 BY MS. DEWITT:

7 Q. What is depicted in page 45 of Government's Exhibit 46?

8 A. That's the Sony Vaio with its power cord.

9 MS. DEWITT: And if I could ask to have the next page
10 in that exhibit displayed for the jury, please? 11:39

11 If I could have -- let's go back to the previous.

12 BY MS. DEWITT:

13 Q. Directing your attention to the fifth page of this
14 exhibit, what is depicted there?

15 A. That is the white laundry basket with the items that were
16 contained when they were seized. 11:40

17 Q. And if you could look at -- that shows -- what can you see
18 in that picture there?

19 A. You can see an Xbox 360, the Sony Vaio laptop with power
20 cord, and miscellaneous items that are contained in a plastic
21 bag. You can see a video game, an Xbox 360 video game and
22 controllers. 11:40

23 Q. And if you could go -- if you could look at the next page
24 in that Exhibit, 46.46. This does appear to be that bag that I
25 just showed him. 11:41

1 | What is depicted in this?

2 A. These are the items that were contained within the white
3 laundry basket.

4 Q. Including the Sony Vaio that you just testified about, and
5 the Xbox?

6 A. Yes, ma'am.

7 MS. DEWITT: And at this time, I would ask to have
8 placed before the witness what's been previously marked for
9 identification as Government's Exhibit 11-A7 and 11-A8, 11-A9.

10 | BY MS. DEWITT:

11 Q. Starting with Government's Exhibit 11-A7, what is that?

12 A. This is a power cord for a Sony Vaio laptop.

13 Q. And going next to 11-A8, what's in that?

14 A. That's a power cord and component cables for an Xbox 360.

15 Q. And 11-A9?

16 A. It is a power cord for an Xbox controller.

17 MS. DEWITT: And at this time, the Government would
18 move to admit Government's Exhibit 11-A6 -- excuse me. 11-A7
19 through 11-A9.

20 THE COURT: Any objection?

21 MS. VIRAMONTES: No, Your Honor.

22 MR. THOMAS: No, Your Honor.

23 | THE COURT: They are ordered admitted.

24 You may publish.

25 (Government's Exhibit Nos. 11-A7 through 11-A9 were admitted.)

11:41

11:41

11:42

11:42

11:43

1 MS. DEWITT: If you can show the jury each of those
2 exhibits?

3 If I could now ask to have placed before the witness
4 what's been previously marked for identification as
5 Government's Exhibit 11-A10. 11:43

6 BY MS. DEWITT:

7 Q. What is that, Special Agent Sirk?

8 A. It's an Xbox 360 controller with the Los Angeles Raiders
9 -- or excuse me, the Oakland Raiders now. I'm an old guy from
10 Los Angeles. It's a controller. 11:44

11 Q. Was that one of the items that was found in the white
12 laundry basket?

13 A. Yes, ma'am, that's correct.

14 Q. And if I could ask you to take a look at what's been
15 marked for identification as 11-A11, and 11-A12 and 11-A13. 11:44

16 Let's start with 11-A11. What is that?

17 A. 11-A11 is a white Xbox 360 controller. 11-A12 is also an
18 Xbox controller; it's white in color. And 11-A13 is a black
19 Xbox 360 controller.

20 Q. And again, were those all items that were found in the
21 white laundry basket? 11:45

22 A. Yes, ma'am, that's correct.

23 MS. DEWITT: And, Your Honor, the Government would
24 move to admit Government's Exhibits 11-A11 through 11-A13.

25 THE COURT: Any objections? 11:45

1 MS. VIRAMONTES: No, Your Honor.

2 MR. THOMAS: No, Your Honor.

3 THE COURT: They are ordered admitted.

4 You may publish.

5 (Government's Exhibit Nos. 11-A11 through 11-A13 were admitted) 11:45

6 BY MS. DEWITT:

7 Q. And if you can just show those? I think you sort of
8 already have.

9 MS. DEWITT: And, Your Honor, apparently I overlooked
10 moving to admit Government's Exhibit 11-A10, and I would so 11:46
11 move at this time.

12 THE COURT: Any objections to 11-A10?

13 MS. VIRAMONTES: No, Your Honor.

14 MR. THOMAS: No, Your Honor.

15 THE COURT: Thank you. It's ordered admitted. 11:46

16 (Government's Exhibit No. 11-A10 was admitted.)

17 MS. DEWITT: At this time, I would ask you to place
18 before the witness what's been marked as Government's Exhibit
19 11-A14 and 11-A15.

20 BY MS. DEWITT: 11:46

21 Q. Starting with 11-A14, what is that?

22 A. Forgive me, ma'am. I'm not sure which one is which. But
23 it contains a *Fortress of the Muslims*. It's depicted on the
24 middle of the table there. I'm not sure if this is 14 or 15.
25 This was inside the white basket, as well as the *Sealed Nectar* 11:47

1 book.

2 Q. Thank you. And for the record, I believe the *Fortress of*
3 *Muslim* is A15, and the *Sealed Nectar* is A14.

4 Are those -- those are two items that you found in
5 the white laundry basket? 11:47

6 A. Yes, ma'am, that's correct.

7 MS. DEWITT: And at this time, I would move to admit
8 Government's Exhibit 11-A14 and 11-A15. And you can show
9 those --

10 THE COURT: Any objections? 11:47

11 MS. VIRAMONTES: No, Your Honor.

12 MR. THOMAS: No, Your Honor.

13 THE COURT: Ordered admitted.

14 You may publish.

15 (Government's Exhibit Nos. 11-A14 and 11-A15 were admitted.) 11:47

16 MS. DEWITT: Excuse me for being presumptuous.

17 And if I could ask to have placed before the witness
18 what's been marked for identification as Government's Exhibit
19 11-A16?

20 THE WITNESS: Yes, ma'am. It's an expired Filipino 11:48
21 passport in the name of Mr. DeLeon.

22 MS. DEWITT: And at this time, I would move to admit
23 Government's Exhibit 11-A16, Your Honor.

24 THE COURT: Any objections?

25 MS. VIRAMONTES: No, Your Honor. 11:48

1 MR. THOMAS: No, Your Honor.

2 THE COURT: All right. 11-A16 is ordered admitted.

3 You may publish.

4 (Government's Exhibit 11-A16 was admitted.)

5 MS. DEWITT: And at this time, if I could ask to have 11:48
6 Government's Exhibit 11-A17 placed in front of the witness?

7 THE WITNESS: 11-A17 is also an expired Filipino
8 passport in the name of Mr. DeLeon.

9 MS. DEWITT: And at this time, Your Honor, the
10 Government would move to admit Government's Exhibit 11-A17. 11:49

11 THE COURT: Any objections to 11-A17?

12 MS. VIRAMONTES: No, Your Honor.

13 MR. THOMAS: No, Your Honor.

14 THE COURT: Thank you. It's ordered admitted.

15 You may publish.

16 (Government's Exhibit No. 11-A17 was admitted.)

17 BY MS. DEWITT:

18 Q. Again, those are the -- those are two items that are
19 depicted in the photograph that's up on the screen right now?

20 A. That's correct. Yes, ma'am.

21 MS. DEWITT: I now ask to have placed in front of the
22 witness what's been marked for identification as Government's
23 Exhibit A21 -- I'm sorry, 11-A21.

24 THE WITNESS: 11-A21 is the copy of the Quran that
25 you see adjacent to the white basket. In the picture, you'll 11:50

1 notice that there are some white pieces of paper hanging out,
2 and they are not contained in here right now.

3 MS. DEWITT: And at this time, Your Honor, the
4 Government would move to admit Government's Exhibit 11-A21.

5 THE COURT: Any objection? 11:50

6 MS. VIRAMONTES: No, Your Honor.

7 MR. THOMAS: No, Your Honor.

8 THE COURT: Thank you. It's ordered admitted.

9 (Government's Exhibit No. 11-A21 was admitted.)

10 BY MS. DEWITT: 11:50

11 Q. Special Agent Sirkо, you noted that there were some white
12 papers that were sticking out of the Quran?

13 A. Yes, ma'am, that's correct. They were three letters
14 written partially in English and partially in what appeared to
15 be Tagalog. I don't read Tagalog, so I'm not sure. 11:51

16 Q. And are the letters -- the letters themselves were items
17 that you searched during the course of your follow-up on the
18 contents of these particular items found in this white laundry
19 basket, correct?

20 A. Yes, ma'am, that's correct. 11:51

21 MS. DEWITT: And if I could ask my colleague to
22 please show up on the overhead what has been identified as
23 Government's Exhibit 46 at page 47.

24 BY MS. DEWITT:

25 Q. What's depicted there? 11:51

1 A. That is a picture of the Quran with the letters that were
2 inside. That's how we found it inside the basket.

3 MS. DEWITT: And if I could now ask you to put up the
4 next page, 48.

5 THE WITNESS: What you see depicted in there is a 11:52
6 picture -- we opened the Quran up, and that's how the letters
7 were, as well as a couple pictures.

8 BY MS. DEWITT:

9 Q. So there was one photograph and three letters, or was 11:52
10 there more than one photograph?

11 A. I believe there were two photographs, ma'am.

12 Q. Okay. Two photographs and three different letters that 11:52
13 were inside the Quran?

14 A. Yes, that's correct.

15 Q. If I can now ask you to look at page 49 of Government's 11:52
16 Exhibit 46.

17 What's being depicted there?

18 A. That is one of the letters addressed to Mico. That's the
19 back of it.

20 Q. And if I could now ask to have the 51st page of this 11:52
21 exhibit.

22 What is that?

23 A. That is the second letter with -- addressed to Daddy.
24 With the -- again, it's the backside of the page.

25 Q. And if I can ask now what's the 53rd page of that exhibit? 11:53

1 A. That is the third letter, addressed to Mommy. Again, the
2 backside of the page.

3 Q. And did you also have photographs of the actual writing on
4 the letter?

5 A. Yes, ma'am.

11:53

6 MS. DEWITT: And at this time, if I could have
7 page 48 shown? I'm sorry, page 50. I apologize.

8 THE WITNESS: Page 50 is the actual letter that was
9 addressed to Mico.

10 MS. DEWITT: And if I could now have page 52
11 displayed?

11:54

12 THE WITNESS: Page 52 is the contents of the letter
13 addressed to Daddy.

14 MS. DEWITT: And if I could now have page 54
15 displayed?

11:54

16 THE WITNESS: Page 54 is the contents of the letter
17 addressed to Mommy.

18 BY MS. DEWITT:

19 Q. Special Agent Sirk, these letters don't appear to be
20 entirely in English, or most of them?

11:54

21 A. That's correct.

22 Q. Are you aware of what language these are being written in?

23 A. No, I don't know for sure. I assume it was Tagalog, but I
24 cannot confirm.

25 MS. DEWITT: At this time, Your Honor, the Government

11:54

1 would move to admit Government's Exhibit 21.

2 And if I could ask to have placed in front of the
3 witness Government's Exhibit A22, A23 and A24?

4 THE COURT: All right. Is there any objection to 21?

5 MS. VIRAMONTES: No, Your Honor. 11:55

6 MR. THOMAS: No, Your Honor.

7 THE COURT: It's ordered admitted.

8 And you may publish.

9 (Government's Exhibit No. 21 was admitted.)

10 THE WITNESS: A22 is the letter addressed to Mico,
11 including two photographs. 11:55

12 BY MS. DEWITT:

13 Q. That's the actual letter that's depicted in the
14 photographs that we just saw?

15 A. Yes, ma'am. That's correct. 11:55

16 Q. And Exhibit 11-A23?

17 A. That's the letter that's depicted in the photographs
18 addressed to Daddy.

19 Q. And Exhibit 11-A24?

20 A. A24 is the last letter addressed to Mommy. 11:56

21 MS. DEWITT: And at this time, Your Honor, I would
22 move to admit Government's Exhibits 11-A22 through 24.

23 THE COURT: All right. Any objections?

24 MS. VIRAMONTES: No, Your Honor.

25 MR. THOMAS: No, Your Honor. 11:56

1 THE COURT: Ordered admitted.

2 You may publish.

3 (Government's Exhibit Nos. 11-A22 through 11-A24 admitted.)

4 MS. DEWITT: May I have one moment, Your Honor?

5 If I could ask my colleague to put back up the
6 Exhibit 46, page 52. I'm sorry, 51. 11:57

7 BY MS. DEWITT:

8 Q. If you could go to 46-50. And Special Agent Sirko, what's
9 depicted here is, I believe you just testified, is the letter
10 addressed to Mico. 11:58

11 Could you read what it says at the bottom of that
12 passage of that letter, which is being highlighted right now to
13 make it a little easier for the jury to follow?

14 A. Yes, ma'am. It says, *Love you, bro. Be a good Muslim and*
15 *invite people to Islam. The Xbox is yours. Ya Sin Rafiq Abdul*
16 *Raheem.* 11:59

17 MS. DEWITT: And now if I could ask my colleague to
18 put up the letter identified as being to *Daddy*. It's found at
19 46, 52.

20 BY MS. DEWITT:

21 Q. If I could direct your attention to the bottom of that
22 letter, the portion my colleague is going to highlight now.

23 If you could read that to the jury, please?

24 A. *Please tell the family I love them dearly, and please*
25 *accept Islam so, God willing, you don't end in hell fire. I am* 11:59

1 already in Turkey, Istanbul. Ralph Kenneth Salseda DeLeon.

2 MS. DEWITT: Your Honor, I am now --

3 THE COURT: At a breaking point?

4 MS. DEWITT: Yes.

5 THE COURT: All right. Ladies and gentlemen, we'll 12:00
6 recess for lunch until 1:15 this afternoon.

7 Remember over the lunch hour, and for the course of
8 the trial, don't do any investigation. Don't communicate with
9 anyone in any way about this trial, about any of the evidence,
10 the participants in the trial, any issue related in the 12:00
11 broadest possible sense. Don't make up your mind or form any
12 opinions about the evidence or any issue in the trial or about
13 your verdict.

14 Thank you. You're excused.

15 (Out of the presence of the jury:) 12:00

16 THE COURT: You may step down.

17 We're in recess.

18 MR. AARON: Your Honor, what time do you want us
19 back?

20 THE COURT: 1:15 -- or 1:10, just to be safe. 12:01

21 (Lunch Recess)

22 -000-

23

24

25

1 C E R T I F I C A T E
23 DOCKET NO. EDCR 12-92(B) VAP
45 I hereby certify that pursuant to Section 753,
6 Title 28, United States Code, the foregoing is a true and
7 accurate transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the regulations
of the Judicial Conference of the United States.8
9
10
11 /S/ Phyllis A. Preston

DATED: August 15, 2014

12 Federal Official Court Reporter
13 CSR, FCRR
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